



Aide-memoire

Talking points for possible Cabinet oral item 5 October 2020: Update on impact of rent increase freeze expiry and report back on Healthy Homes Standards compliance statements

Date:	1 October 2020	Security level:	In Confidence
Priority:	Medium	Report number:	AMI20/21090038

Information for Minister

Hon Kris Faafoi
Associate Minister of Housing
(Public Housing)

Note the talking points attached to support you at Cabinet on 5 October 2020, should you wish to present an oral item.

Contact for discussion

Name	Position	Telephone		1 st contact
Naomi Stephen-Smith	Manager, Tenures and Housing Quality	04 832 2433	s 9(2)(a)	✓
Katherine Slaney	Principal Advisor	04 830 6912	s 9(2)(a)	

Other agencies consulted

Ministry of Business, Innovation and Employment (Tenancy Services)

Minister's office to complete

- Noted
- Seen
- See Minister's notes
- Needs change
- Overtaken by events
- Declined
- Referred to (specify)

Comments

Date returned to MHUD:



Aide-memoire

Talking points for possible Cabinet oral item 5 October 2020: Update on impact of rent increase freeze expiry and report back on Healthy Homes Standards compliance statements

For: Minister Faafoi, Associate Minister of Housing (Public Housing)

Date: 1 October 2020

Security level:

Priority: Medium

Report number: AMI20/21090038

Purpose

1. This Aide memoire provides you with an update on the impact of the rent increase freeze expiry and a report back on Healthy Homes Standards compliance statements. We have also provided talking points, should you decide to present an oral item at Cabinet on Monday, 5 October 2020 on:
 - a. the impact of the rent increase freeze expiry, which took effect on Friday 25 September 2020; and
 - b. whether landlords are on track to meet the 1 December 2020 extended deadline for including statements in tenancy agreements about the current level of compliance of their rental properties with the Healthy Homes Standards.

Expiry of COVID-19 residential tenancies rent increase freeze

Background

2. The six-month COVID-19 prohibition on rent increases ended on Friday 25 September 2020. Between 26 March and 25 September 2020, it was an unlawful act for landlords to increase rents, and any rent increase notices given prior to the restriction were deemed to have no effect.
3. Since 12 August 2020 when the new rent increase provisions in the Residential Tenancies Amendment Act 2020 took effect, landlords have only been able to increase rent for a property from 26 September 2020 (as long as at least 60 days' notice was given) if rent was last increased on or before 25 September 2019.
4. It is possible that landlords gave rent increase notices to tenants under the old rules, between 27 March and 11 August 2020, to take effect from 26 September 2020 onwards (i.e. with the requisite 60 days' notice), even if their last rent increase was only 180 days (approximately 6 months) prior to the date of the increase.

There are reports of rent increase complaints amongst tenant advocacy groups, but it is difficult to know whether the increases are widespread

5. We have canvassed landlord and property manager groups, and tenancy advocacy groups, to gauge whether there are indications of widespread rent increases, as a result of the expiry of the rent freeze. However, to date, we are yet to see general trends in rent increases across the country.
6. Some tenant advocacy and consumer groups have reported they have seen a noticeable increase in renter enquiries and concerns about rent increase notices, including the timing, legality and amount of the increase.

s 9(2)(g)(i)

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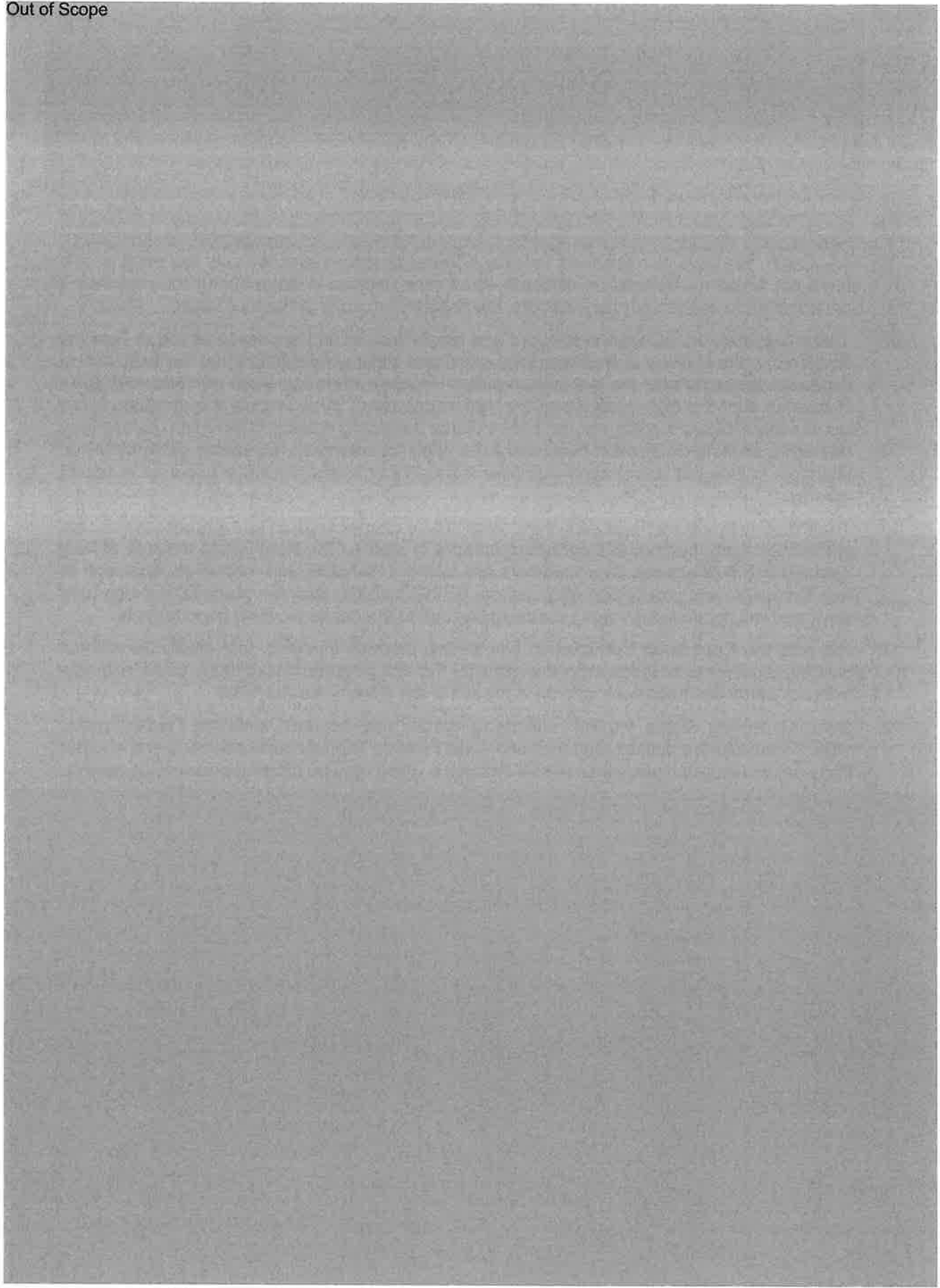
s 9(2)(g)(i)

Auckland). We have also scanned Tenancy Tribunal decisions over the past few months, and have not found an increase in disputes about rent increase notices during the rent freeze period. It is too soon to peruse decisions made after the expiry of the rent freeze.

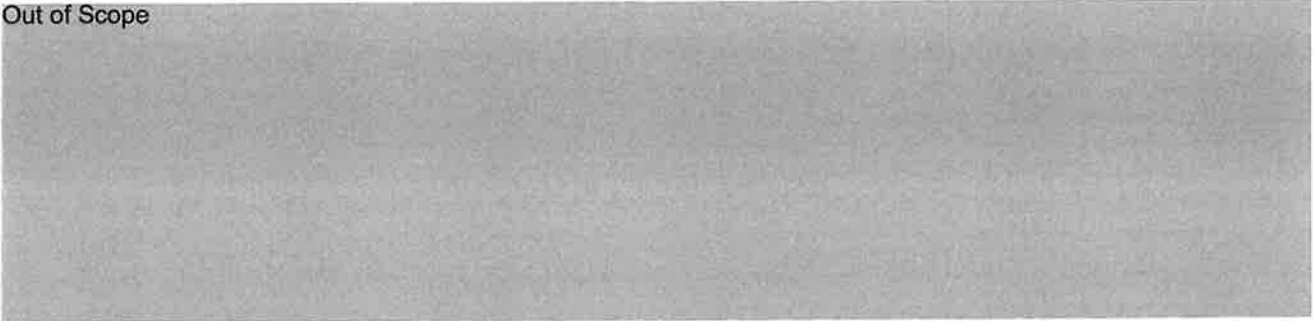
9. There has been an increase in landlord and tenant queries to the service centre in Tenancy Services, in the Ministry of Business Innovation and Employment (MBIE) on the topic of rent increases generally over the last three months. However, there has been no noticeable spike in queries over the last week (since the rent freeze lifted). An increase in queries does not necessarily indicate a complaint, or that landlords are acting outside of the rules (parties may be ringing seeking clarification over what rules apply for example). Increasing call volumes on this topic is also not unexpected given the legislative changes that have occurred in recent months.
10. The Property Investors Federation think there will be a small spike in rent increase 'catch ups' in the short term, but they will not be exploitative in nature. The Real Estate Institute of New Zealand (REINZ) advises their members are taking a 'sensible and measured' approach to rent increases, and proceeding with caution. REINZ consider their members take a long-term view, and will not increase rents unreasonably, due to the desire to retain good tenants.
11. We note the Commerce Commission has alerted property investors that discussions about banding together to increase rents the day after the rent increase freeze ends, could be 'price-fixing' or cartel-like behaviour, and be in breach of the Commerce Act 1986.
12. Over the coming weeks, we will continue to monitor relevant data, including Trademe data, MBIE service centre queries, and mediation and Tenancy Tribunal applications, to see whether there are widespread indications of rent increases which may be causing pressure on renters.

Out of Scope

Out of Scope



Out of Scope



Talking points

27. If you choose to provide an oral update at Cabinet, talking points are attached as **Annex A**.

Annex A: Talking points for oral update to Cabinet Monday 5 October 2020

Expiry of rent increase freeze

- The six-month COVID-19 prohibition on rent increases ended on Friday 25 September.
- Since 12 August 2020 when the new rent increase provisions in the Residential Tenancies Amendment Act took effect, landlords are only able to increase rent for a property on 26 September 2020 (with 60 days' notice) if rent was last increased on or before 25 September 2019.
- Because the rent freeze has only just expired, we are yet to see widespread trends in rent increases. However, there are a reasonable number of reports of landlords serving notice on tenants of significant rent increases and a call from some landlord groups for rent control measures, in light of the economic impact of COVID-19.
- My officials will continue to monitor relevant data including Trademe data, MBIE service centre queries, and mediation and Tenancy Tribunal applications, to see whether there are widespread indications of rent increases which may be causing pressure on renters.

Out of Scope





Briefing

Supporting the transition of renters and rental markets given the impact of COVID-19			
Date:	2 June 2020	Security level:	In Confidence
Priority:	High	Report number:	BRF19/20050670

Action sought		
	Action sought	Deadline
Hon Kris Faafoi Associated Minister of Housing (Public Housing)	Agree to not extend the temporary restrictions on residential tenancy terminations due to expire on 25 June 2020. Note officials have considered options to facilitate the transition back to a stable rental market as the economic impact of the COVID-19 crisis is felt and are available to discuss these with you.	5 June 2020
Hon Dr Megan Woods Minister of Housing		5 June 2020

Contact for discussion				
Name	Position	Telephone	Mobile	1st contact
Caleb Johnstone	Manager, Market & Supply Response	04 832 2572	s 9(2)(a)	✓
Naomi Stephen-Smith	Manager, Tenures and Housing Quality	04 832 2433	s 9(2)(a)	
Sophie Russell	Policy Advisor, Places & Partnerships	04 832 2416		

Other agencies consulted
MSD, MOJ, Treasury, DPMC, MPI and Tenancy Services (MBIE)

Minister's office to complete

<input type="checkbox"/> Noted <input type="checkbox"/> Seen <input type="checkbox"/> Approved <input type="checkbox"/> Needs change <input type="checkbox"/> Not seen by Minister <input type="checkbox"/> Overtaken by events <input type="checkbox"/> Declined <input type="checkbox"/> Referred to (specify) <hr/>
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Comments

Date returned to MHUD:



Briefing

Supporting the transition of renters and rental markets given the impact of COVID-19

For: Hon Kris Faafoi, Associate Minister of Housing
Hon Dr Megan Woods, Minister of Housing

Date: 2 June 2020

Security level: In Confidence

Priority: High

Report number: BRF19/20050670

Purpose

1. This briefing:

Out of Scope

b. canvasses options to facilitate the transition back to a stable rental market as the economic impact of the COVID-19 crisis is felt.

Executive summary

2. The *COVID-19 Response (Urgent Management Measures) Legislation Act 2020* includes amendments to the *Residential Tenancies Act 1986* (the RTA), which impose restrictions on tenancy terminations and freeze rent increases. These restrictions expire on 25 June 2020 and 25 September 2020, respectively. The restrictions on tenancy terminations may be extended by up to three months by Order in Council.

3. The above restrictions were designed to address the public health impacts of COVID-19 and the immediate needs of renters and the rental market during the time New Zealand remains under national alert levels and to manage the affects to renters who have lost some or all of their income. However, the rental market may need support in the longer term to assist the transition from these temporary measures to a self-adjusting market.

4. Out of Scope

5. We are aware that there is and will be significant hardship for renters as a result of the economic fallout from the COVID-19 pandemic. Due to widespread loss of jobs and income there will likely be many renters who are no longer able to cover their current rents, many of whom will have entered into rent agreements they can no longer afford. Job and income loss will also cause financial difficulties for some landlords.

6. The ongoing impact on rental markets is highly uncertain and will vary between places depending on a number of factors. We can, however, reasonably expect an increase in the number of stressed renters (defined as those spending more than 30 per cent of their household income on housing costs) as a result of COVID-19. We anticipate a shift in demand to rental properties in the lower quartile, as people who could previously afford

median-priced rentals are only able to afford lower quartile properties, increasing competition in this already under-supplied section of the market.

7. While there is no legislative barrier to tenant-driven rent negotiation, there is a range of reasons that renters may not succeed, or even try. Māori and Pacific peoples, and tenants for whom English is a second language, may be disadvantaged in negotiating with landlords. Other tenants may not be able to move for other reasons. This could be a wide-spread problem due to New Zealand's reliance on fixed-term tenancy agreements.
8. There is a range of programmes designed to alleviate this hardship. Any potential new options will need to be carefully considered for consistency with existing interventions and communicated clearly. Some existing mechanisms are:
 - a. MSD's Housing Support Products, Housing Subsidies, and grants and advances for housing-related costs
 - b. COVID-19-specific measures which will assist tenants, such as the Wage Subsidy and its extension, the Income Relief Payment for those who have lost their jobs, and changes to the Rent Arrears Assistance Housing Support Product, for tenants affected by economic hardship to sustain their tenancies
9. We have considered whether further regulatory mechanisms within the tenancy framework could support these measures and the tenancy market to transition. The intervention options we have considered include:
 - Option 1: issuing guidance or establishing a process for landlords and tenants to come to an independent agreement on rent reductions
 - Option 2: encourage uptake of mediation services to reach agreed outcomes on rent reductions between tenants and landlords
 - Option 3: allowing tenants to terminate fixed-term tenancies early in certain cases
 - Option 4: the extension of the rent increase freezes.
10. Our analysis for each of these options is at a very early stage but indicates that each would have issues. Option 2 in particular is likely to be unfavourable. It would have high operational costs that could impact negatively on the tenancy system as a whole – for example, by increasing wait times for tenancy mediation.
11. However, we recommend that we continue to monitor impacts on the rental market as these interventions may be appropriate at a future date if conditions deteriorate. We advise that the government instead focus on clearly integrating and communicating existing COVID-19 measures. We advise that the government instead focus on clearly integrating and communicating existing COVID-19 measures.

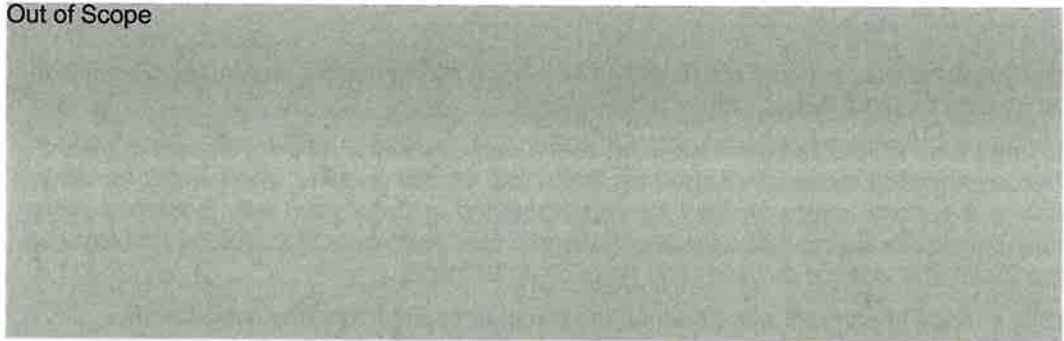
Recommended actions

12. The Ministry of Housing and Urban Development (HUD) recommends that you:
 1. **Note** that the *COVID-19 Response (Urgent Management Measures) Noted Legislation Act 2020* amended the *Residential Tenancies Act 1986* to temporarily impose restrictions on landlords terminating tenancies and freeze rent increases, and these measures expire on 25 June 2020 and 25 September 2020 respectively.

Out of Scope



Out of Scope



6. **Note** while the economic impact of COVID-19 is still unfolding and will be varied across regions, it is likely to affect the ability of renters to meet their current rent, with flow-on financial effects for landlords. *Noted*
7. **Note** officials expect that there will be an increase in landlord applications to the Tenancy Tribunal seeking termination on rent arrears grounds from 26 June onwards (after which normal Residential Tenancies Act rules apply and landlords can apply for termination if a tenant is 21 days in rent arrears). *Noted*
8. **Note** the Government has progressed a number of initiatives designed to cushion the economic impact from COVID-19 and to assist renters who are struggling to meet rent payments, including: the Wage Subsidy Extension; the temporary income support payment for fulltime and part-time workers; and housing support assistance payments administered by the Ministry of Social Development. *Noted*
9. **Note** that HUD has considered a range of options for further interventions that could support a transition in the rental market, including the extension of the rent freeze. *Noted*
10. **Note** that further work on these will require reprioritisation of resources and may pause or slow other work underway. *Noted*
11. **Note** officials are available to discuss any of these options. *Noted*
12. **Forward** this briefing to Hon Carmel Sepuloni, Minister for Social Development. *Agree/Disagree*

Caleb Johnstone
Manager, Market and Supply Responses
2 / 06 / 2020

Kris Faafoi
Associate Minister of Housing
..... / /

Hon Dr Megan Woods
Minister of Housing
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Background

13. On 25 March 2020, Royal Assent was granted to the *COVID-19 Response (Urgent Management Measures) Legislation Act 2020* (COVID Response Act). This omnibus Act includes amendments to the *Residential Tenancies Act 1986* (the RTA), imposing restrictions on tenancy terminations and freezing rent increases. These restrictions expire on 25 June 2020 and 25 September 2020 respectively, and revert to the standard provisions the following day. The restrictions on tenancy terminations may be extended by up to three months by Order in Council.

Out of Scope



Both the health impacts and broader economic impacts of COVID-19 are relevant to the rental market

Out of Scope



Economic impacts

17. While New Zealand is no longer under alert level 3 or 4, the COVID-19 pandemic is expected to have a significant ongoing effect on the New Zealand economy, although the extent of this is still unfolding and will be varied across regions. We expect it to impact rental markets, as widespread loss of jobs and income is likely to impact both the ability of tenants and landlords to meet their costs.
18. Where tenants are struggling to pay rent because of the impact of COVID-19 on their income, some may seek to renegotiate rent with their landlord, either on a temporary or longer-term basis. Some may also find alternative cheaper accommodation and either give 21 days' notice (if on a periodic tenancy) or attempt to break the lease (if on a fixed-term lease), in the latter case by discussion with the landlord or through an application to the Tenancy Tribunal (the Tribunal).
19. Not all tenants will attempt these options. They may simply not be aware of them or may choose not to for a range of reasons, such as concern of a negative impact on their relationship with their landlord in the case of failed attempts to negotiate or break the lease.
20. The success or failure of these options could result in a range of outcomes for both tenant and landlord. For example:
 - a. A tenant could fall into rent arrears and face the prospect of eviction by their landlord (after 60 days under temporary COVID-19 restrictions or after 21 days under standard RTA provisions) on application to the Tribunal;

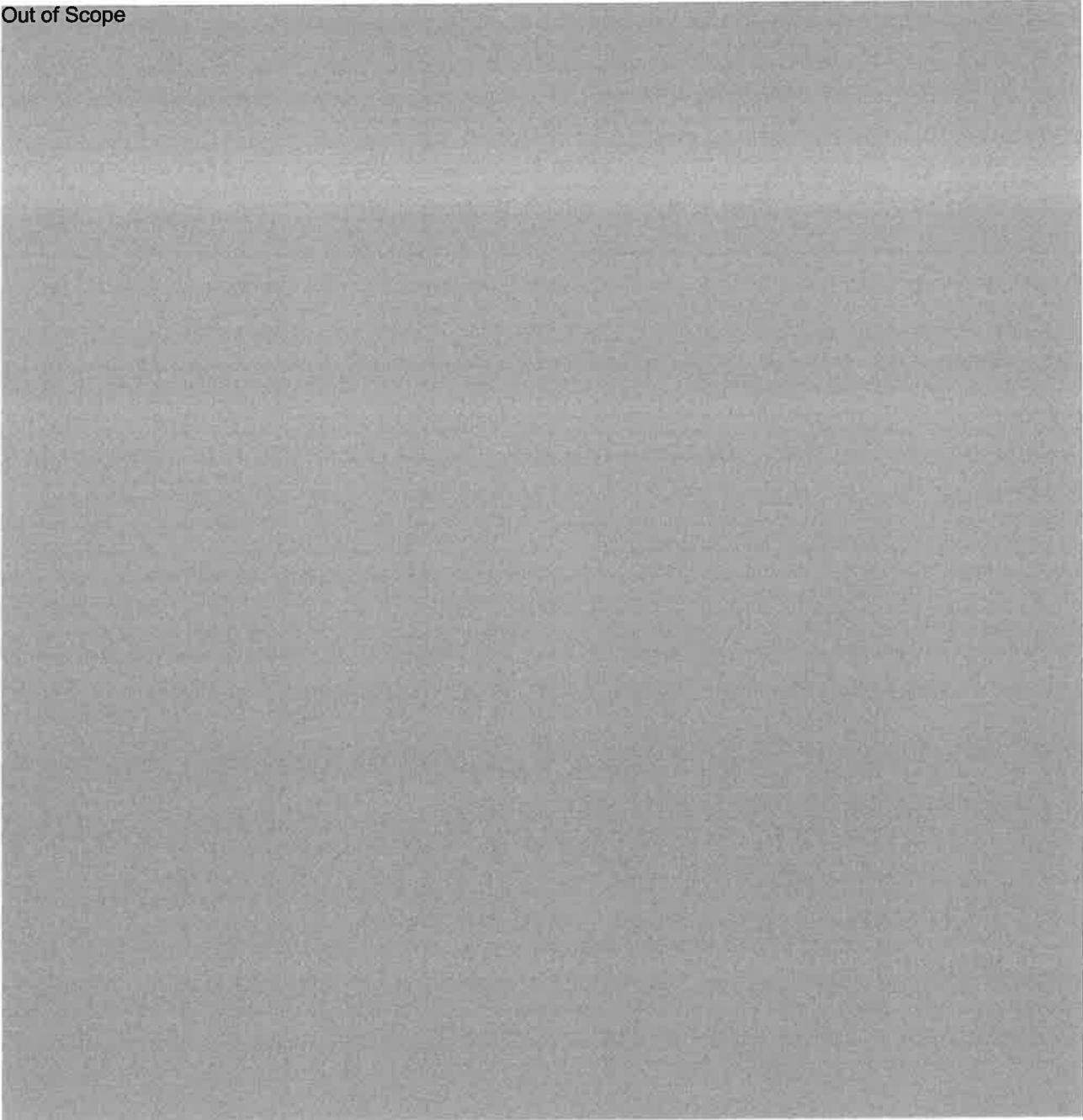
- b. A tenant could become homeless – either losing their housing completely, or being forced to move in with family; this will further increase overcrowding and consequent health problems.
 - c. Tenants breaking leases or defaulting on rent payments will impact the landlord's financial position and possibly their ability to service mortgages. If financial shocks are too severe, this could result in repossession of their properties, or other impacts on their wellbeing. The temporary restrictions on terminating the tenancies of problematic tenants and the rent freeze limit the choices available to landlords to address financial pressures on their businesses.
21. Māori and Pacific people are disproportionately likely to be renters and are already over-represented amongst those affected by unemployment and rental stress. Many are already highly affected by the economic impacts of COVID-19, and advice from regions is that overcrowding is already increasing.

Recent surveys indicate some renters and landlords are starting to struggle – but it is still “early days”

22. The extent of the impact of the COVID-19 is still unfolding. Surveys in April 2020 indicate some effects of the COVID-19 crisis are starting to be felt in the rental market. These surveys have included:
- a. a nationwide Colmar Brunton survey of 700 landlords and property managers and 2,002 tenants - a further survey of the same group is expected to be carried out later in June,
 - b. the New Zealand Property Investors Federation (NZPIF) undertook the first of a series of surveys of rental property owners and property managers on how they were affected by the COVID-19 lockdown - his garnered responses by 621 owners and property managers who collectively manage 6,056 rental properties, and
 - c. a recent Renters United survey, which received 1,983 responses, at least 94 per cent of them in private rentals.
23. A detailed list of findings from the latest nationwide survey of renters and landlords undertaken by Colmar Brunton in April 2020 (towards the end of 'lockdown') are set out in **Annex A**, as are key insights from the other two surveys. Although the three have varying data, it is clear that both tenants and landlords have had their income affected by COVID-19. Between 40 to 60 percent of each group has had their income affected, about half of whom have lost half or more of their income. Both groups are concerned about their ability to meet costs.
24. There is also some evidence of rental negotiation occurring. In the Colmar Brunton survey, around 12 percent of landlords reported reducing rent for tenants and of these most reduced it by at least 25 percent (temporarily or with repayment conditions). Five percent of renters reported that their landlord has reduced their rent. This discrepancy may be because a tenant seldom has more than one landlord, while a landlord may have many tenants.
25. However, the Renters United survey found that while 34 percent of renters had some form of communication with their landlords regarding their rent, only 5.9 percent received a rent reduction while 2.1 percent received a rent deferral.
26. We will continue to closely monitor the impacts of the COVID-19 crisis for renters and landlords. Officials expect to see an increase in Tribunal applications relating to rent arrears following the expiry of the COVID-19 legislation. It is also likely that landlord applications for termination on rent arrears grounds will increase after 25 May 2020. This is because under the temporary restrictions tenants may be in rent arrears for 60 days before a landlord can apply for termination. 25 May was 60 days from the date the restrictions came into force, meaning that arrears postdating the restrictions will begin to meet the 60-day threshold.

27. Based on the above survey findings, it is likely that there will be an increase in the number of applications relating to rent arrears. While it is difficult to predict the exact magnitude of this increase, we note that currently landlords can only apply for terminations for at least 60 days of rent arrears. On 25 June this will return to 21 days, so there could be an increase in applications for rent arrears which are between the 21 and 60-day mark at the time.
28. We expect that there will also be an increasing number of Tribunal applications from tenants seeking early terminations of fixed-term tenancies, as time goes on and the economic impact of the COVID-19 crisis worsens. These may be due to COVID-19-related hardship, for example because the tenant has been made redundant and can no longer afford to meet rent payments.
29. Given that these grounds require certain notice periods, they would likely start to impact the market from early August.

Out of Scope




Out of Scope

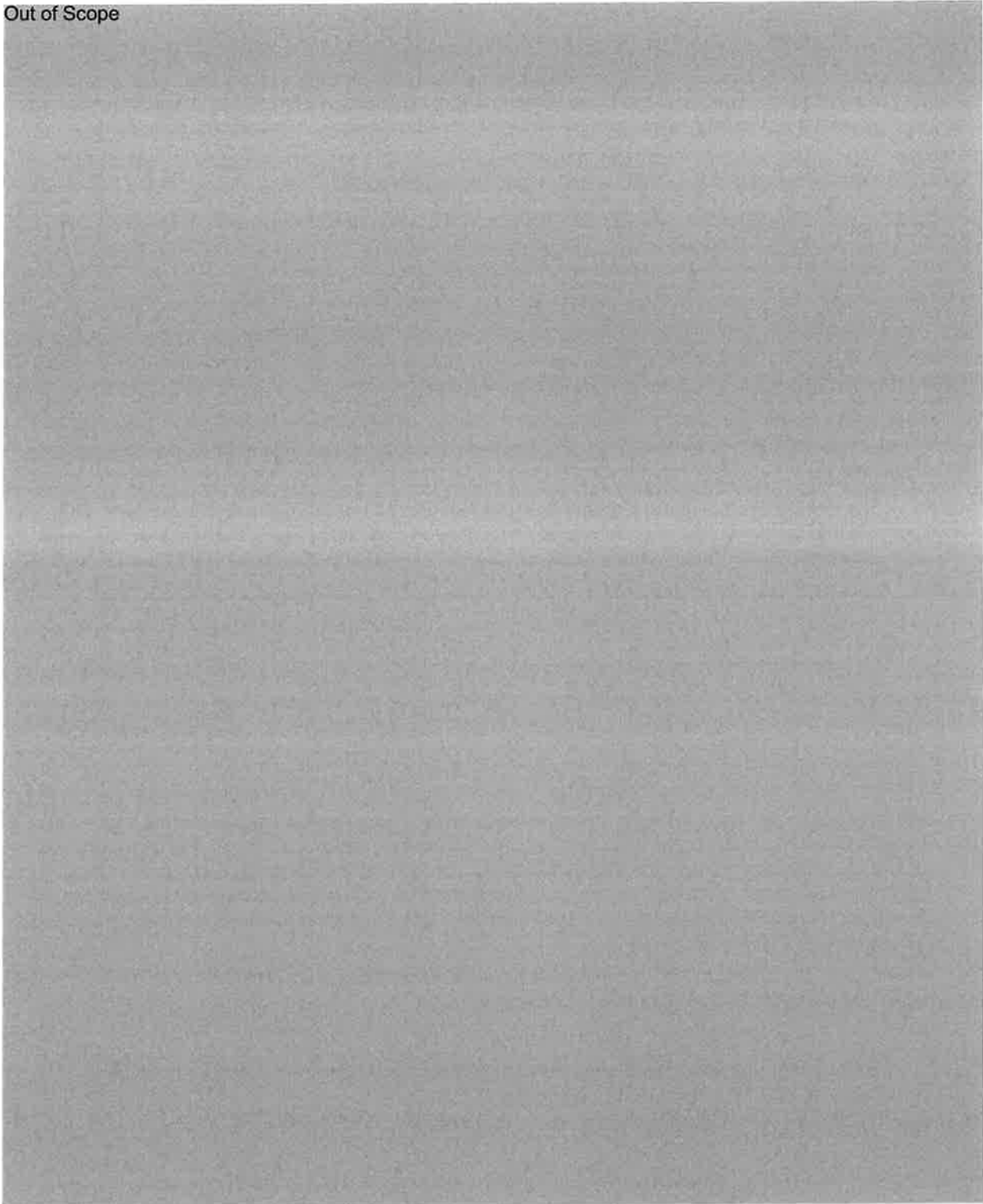


A staggered approach to pre-COVID-19 rules is advisable

41. We also consider it preferable to have termination restrictions end in advance of the lifting of rent freezes, to stagger the return to pre-COVID-19 rules. This would avoid the possible cumulative negative impact of changes for the rental market if both sets of restrictions were to be lifted at once. A staggered approach will help with the management of increased Tribunal application volumes following the expiry of the tenancy provisions in the COVID-19 legislation

Out of Scope





Other government COVID-19 responses will assist renters

49. We expect to see an increase in demand for rent arrears assistance as a result of the evolving impact of COVID-19 crisis on household incomes.

There are a range of existing measures that help renters

50. MSD already provides housing assistance to help people with their various housing costs through:

- a. Housing Support Products (HSPs) – Various housing support products are available in the form of Bond Grants, Rent Arrears Assistance (RAA), Rent in Advance, Moving Assistance, Tenancy Costs Cover, Statement of Satisfactory Tenancy, Transition to Alternative Housing Grant and Emergency Housing Special Needs Grants (EHSNGs)
 - b. Housing Subsidies - Accommodation Supplement (AS), Income Related Rent Subsidy (IRRS) and the Student Allowance Accommodation Benefit
 - c. Other - Recoverable Assistance Payment (RAP) and Advance Payment of Benefit (Advances) for housing-related costs including bond, rent in advance, rent arrears and essential repairs and maintenance for homeowners.
51. The number of tenants requiring rental assistance is likely to increase with the end of the evictions ban and rent increase freeze. This will increase demand on MSD's EHSNG and the AS.

Other interventions have been introduced as a result of COVID-19

52. The Government has progressed a number of initiatives designed to cushion the economic impact from COVID-19 and these will assist renters who are struggling to meet rent payments. They include:
- a. The Wage Subsidy Extension will be available from 10 June 2020 until 1 September 2020. Eligible employers will need to reapply through the Ministry of Social Development (MSD) once their current 12-week subsidy has come to an end.
 - b. Workers who become unemployed due to the COVID-19 crisis will be eligible for the COVID-19 Income Relief Payment, which is a weekly tax-free temporary income support payment for 12 weeks. The payment is intended to help the newly jobless adjust and find new employment or retrain. It is scaled depending on the hours worked (full- or part-time) and is available to students.
53. In addition to the above, Cabinet is currently considering temporary policy changes to the existing recoverable RAA HSP to assist tenants in economic hardship whose income have been reduced as a result of COVID-19, to sustain their tenancy. These proposed policy changes would temporarily increase the maximum amount of the one-off payment, and would allow the RAA HSP to be considered in first instance to provide support for rent arrears for both beneficiaries and non-beneficiaries. Subject to Cabinet agreeing to the above temporary policy changes to the RAA HSP, MSD will also provide communications materials about the revised RAA HSP to increase awareness of this form of assistance. Increasing awareness of the RAA HSP and the support it can provide will be useful in order to ensure it is made available to all those who need it.
54. There would be benefit in active communication around the timing of some different policy interventions beginning or ending in the near future:
- a. The restrictions on tenancy terminations will cease on 25 June 2020.
 - b. Tenancies for which a landlord gives a 90-day no cause termination notice on 26 June will take effect from around 25 September.
 - c. Rental arrears changes are intended to take effect in early July.

It is unclear what the ongoing impact will be on the rental market

55. Rental prices were already very high pre-COVID-19, with many low-income households spending a large proportion of their disposable income on rent. The ongoing impact on the rental market is highly uncertain. The effects on the rental market will vary between regions, depending on the state of each regional rental market prior to COVID-19 and on the severity

and duration of the impacts of the COVID-19 crisis in different areas¹. It is unclear whether there will be a consequential price adjustment across the national rental market.

56. We can, however, reasonably expect an increase in the number of stressed renters (defined as those spending more than 30 per cent of their household income on housing costs) as a result of the COVID-19 crisis. This could result in a shift in demand to rental properties in the lower quartile, as people who could previously afford median-priced rentals are only able to afford lower quartile properties. This will only increase competition in this already under-supplied section of the market.
57. There is speculation that ex-Airbnb properties, no longer occupied due to a drop in short-term demand from tourists, could be offered as longer-term rental properties in some regions and create some downward pressure on rental prices. We are yet to see evidence of such a shift happening at scale. It is also unclear whether this shift would result in a significant change in prices across the board as the location and nature of these properties may not overlap significantly with the areas of highest demand.
58. Some people who would have soon become first home buyers may no longer be able to afford to purchase a home. These people would likely remain in the rental market, increasing the pressure on market rentals.
59. Those who are no longer able to access the limited supply of lower-quartile rental homes may look to public and emergency housing, increasing pressure on the limited supply and potentially creating issues like overcrowding and homelessness. Public housing will be prioritised for those with multiple and complex needs. It may not be the best fit for some of these people, given that they could only have a temporary decrease in income and may still be able to realistically sustain a private rental in the medium to long term.
60. There may also be people stuck in lease agreements that they cannot afford. While there is no legislative barrier to tenant-driven rent negotiation, there is a range of reasons why renters may not succeed, or even try. Māori and Pacific peoples, and tenants for whom English is a second language, may be disadvantaged in negotiating with landlords. Other tenants may not be able to move for other reasons. This could be a wide-spread problem due to New Zealand's reliance on fixed-term tenancy agreements.
61. Māori and Pacific peoples are already over-represented amongst those affected by unemployment and rental stress, and this disparity will only be exacerbated by the COVID-19 pandemic. HUD is presently exploring how it might make use of funding available for the implementation of the Māori and Iwi Housing Innovation (MAIHI) Framework to mitigate the anticipated increase in demand, through the targeted increase of both Māori housing supply and the capability of Māori housing providers.
62. There may be value in furthering the changes outlined below which relate to providing mechanisms to facilitate landlord-tenant negotiation/dialogue and improving flexibility in the rental market. Any continued or new intervention should be guided by the following objectives:
 - a. people are supported to maintain stable, affordable rental housing,
 - b. ensuring continuity of housing supply and enabling the delivery of affordable housing,
 - c. an integrated and agile approach to the needs of regions with significant rental stress, and
 - d. additional protections will also need to be weighed up against other outcomes, including the ability for the market to adjust to meet emerging needs.

¹ The Queenstown-Lakes district for example, is heavily reliant on its tourism industry, which makes up over 60 per cent of its economy. The Covid-19 pandemic has had a significant effect on its tourism sector, and these effects are likely flowing onto the rental market through short-term rental accommodation (for which there is less tourist demand) moving to the longer-term market.

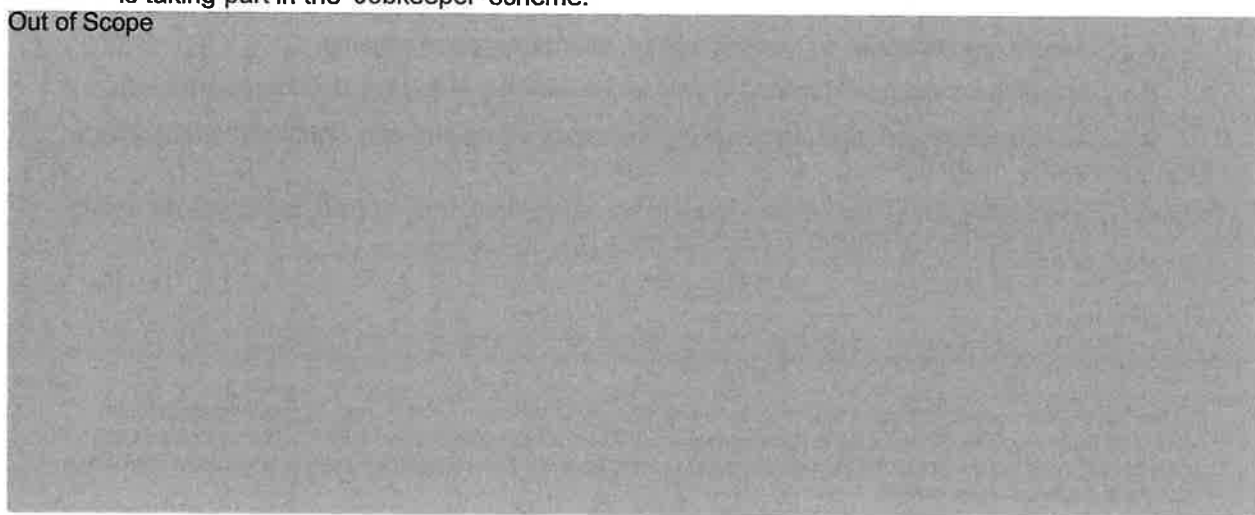
Identification of possible options

63. HUD has identified four areas for possible consideration. Initial analysis is attached at **Annex C**. HUD has also looked at overseas interventions made in response to COVID-19, as described below. The options considered are:
 - a. Issue guidance, or establish a process, setting out how tenants and landlords may renegotiate rent.
 - b. Encourage uptake of mediation or adjudication services to reach agreed outcomes on rent reductions between tenants and landlords.
 - c. Give tenants the ability to break a fixed-term lease early under specified circumstances.
 - d. extend the six-month freeze on rent increases.
64. These options are not mutually exclusive; most overseas examples have introduced a combination of these measures. There is also a number of sub-options within each of the broad options identified below. There are numerous further details which would need to be decided upon, such as the triggers for intervention and mechanisms for enforcement. These details would affect the manner and extent to which each option would affect landlords, tenants and the rental market.
65. While we believe that we can rule out some of these options, we will need to continue to look at the trends of the rental market, including those mentioned in the evidence section above, going forward, and work on other options if needed.
66. All of these options would have financial implications. At this stage we believe the most feasible are options one and three, because they would be less interventionist and more achievable, while still assisting the rental market to transition from its temporary measures. However, our view is that though these options would help to some extent, they would not have a major impact. Further investigation, if you request it, would require HUD resources to be reprioritised and other work is likely to slow as a result.

Targeting of the options

67. Any of the options (excepting guidance) could also be applied as a blanket requirement, could be made available to anyone, or could be targeted. For example, eligibility could be limited to those in receipt of COVID-19 support, such as income support or rental arrears support, although our initial preference is to avoid using rental arrears support as a trigger for these options. While some tenants will fall into arrears and support needs to be given in such a case, HUD's preference would be to support negotiation in a way that avoids arrears occurring in the first place as much as possible. This intervention could be more smoothly linked to the receipt of the wage subsidy or other COVID-19-related financial assistance, similar to Victoria States negotiation guidance intervention being tied to whether a business is taking part in the 'Jobkeeper' scheme.

Out of Scope

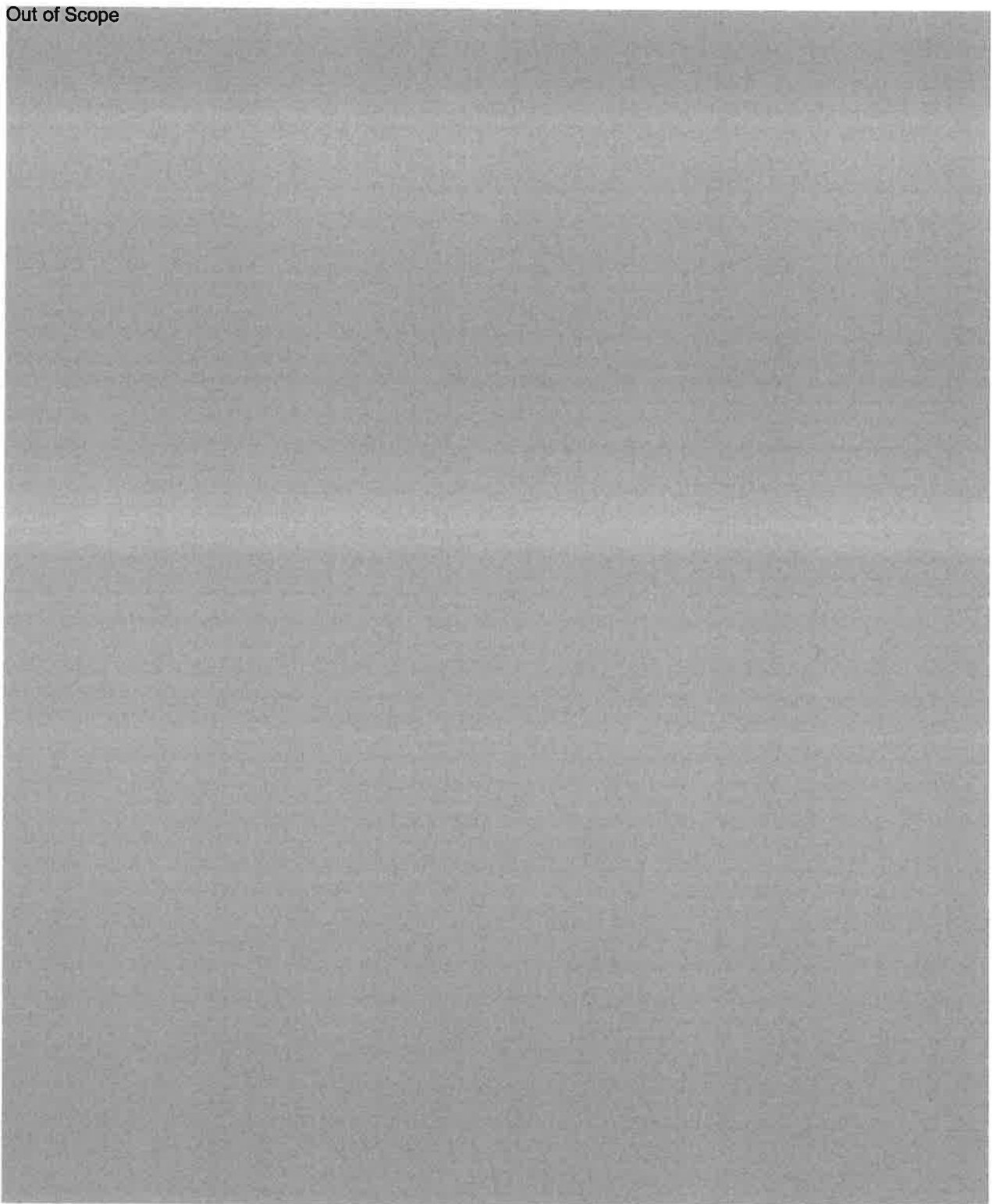


Out of Scope



In confidence -- BRF19/20050670

Out of Scope



Option four: extend the six-month freeze on rent increases

86. The COVID Response Act included provisions temporarily restricting the ability of landlords to increase rents, which normally can be raised every six months (on both fixed-term and periodic leases). These provisions expire on 25 September 2020 and the normal provisions resume the next day, under which landlords can increase rent for fixed-term tenancies if provided in the agreement, and for periodic tenancies every six months. We could consider whether rent freezes should be extended past six months, which would require further legislative change.

87. There are advantages and disadvantages with rent freezes. In the short term, they can stabilise tenancies for renters and keep rents affordable. On the other hand, when the rent freeze is finally lifted, there may be widespread spikes in rent increases as landlords recoup losses and frontload these costs onto new tenants going forward. With no ability to pass on costs to tenants in the form of higher rent, rent freezes can also discourage landlords from making repairs and upgrading their properties.
88. This could be problematic for compliance with the upcoming compliance deadlines for the Healthy Homes regulations, which obligate landlords to upgrade their properties to meet the new standards. Long term rent freezes can result in a reduction of investment in rental properties and therefore in the general supply of rental properties.
89. We do not see a strong case for extending the rent increase freeze at this time but will continue to monitor before advising in greater detail closer to the time that the rent freeze increase is due to expire. If rents go up, then there may be justification to act.

Next steps

90. We have considered the above options for further regulatory amendments to support a transition in the rental market. Our initial assessment is that we would not advise options two (encouraging mediation) or four (extending the rent increase freeze). Options one (guidance) and three (giving tenants the ability to break fixed-term leases) could be investigated further, however the Government's other recent and existing interventions would likely be more effective in helping renters and the rental market to recover. It would be best if the Government continued to progress these, and communicated them actively.
91. We suggest you discuss these options further with officials in order to decide which, if any, options we should direct our focus to and then engage with your colleagues on this matter. Any of the above options will require reprioritisation and funding, which could be significant.
92. We will continue to monitor effects on the rental market and re-evaluate if conditions deteriorate. HUD will also report to the Cabinet Social Wellbeing Committee (SWC-20-MIN-0052) before the rent increase freeze is due to expire in September. This advice will be focussed on the possible extension of the rent freeze increase, the potential impacts of COVID-19 on renters and the rental market, and options to progress any further work on government interventions related to rent arrears and freezes. It will not relate to the decision not to extend termination restrictions.

Annexes

Annex A: Recent surveys of landlords and tenants

Annex B: Draft letter to Ministers and support parties re decision not to extend temporary tenancy terminations

Annex C: Initial analysis of the four indicative options for supporting a rental markets transition

Annex A – Recent surveys of landlords and tenants

Colmar Brunton survey of landlords and renters April 2020

HUD has commissioned surveys to help understand the ongoing impact of COVID-19 on the rental market. A cohort approach is being undertaken by Colmar Brunton whereby the same respondents are surveyed over time. Findings from the latest nationwide online survey of 700 landlords and 2,002 renters during late April 2020 were that:

- a. Around one in eight (12 per cent) landlords report reducing rent for tenants (or at least one of their tenants), and one in ten (10 per cent) have offered support during lockdown in some other way.
- b. Of landlords who reduced their tenants' rent, most reduced it by at least 25 per cent, around four in ten anticipate offering this reduction just during lockdown or up to two months, and around one in eight have agreed with their tenants that it needs to be paid back.
- c. Nearly four in ten landlords are fairly or very concerned about their tenants' ability to pay their rent.
- d. Only five per cent of landlords who did not reduce rent during lockdown report that their tenants have contacted them (or their property manager) to ask them to consider a rent reduction.
- e. Around one in ten (12 per cent) landlords have tenants behind in their rent payments. Three in ten (30 per cent) of these landlords have tenants who are behind in rent by at least four weeks. Over half (61 per cent) of landlords with tenants in arrears have made an arrangement with their tenants agreeing to the arrears.
- f. Nearly half of landlords say COVID-19 has already affected their income. And nearly half of landlords whose income has been affected say it has been reduced by at least half.
- g. Nearly a third (31 per cent) of landlords are fairly or very concerned about their ability to make mortgage payments. One in ten (10 per cent) landlords with a home loan are using the mortgage repayment holiday scheme, with a further quarter (23 per cent) considering doing so.
- h. Just under half (46 per cent) of renters say COVID-19 has already affected their income. More than four in ten (43 per cent) of these renters have lost around half or more of their income.
- i. Just over a third (35 per cent) of renters are struggling more with paying their rent than they were before lockdown. Around half of renters who were at least sometimes struggling before lockdown now say it is even more of a struggle.
- j. The proportion of renters who are behind in their rental payments has more than doubled – from 3 per cent before lockdown to 8 per cent during lockdown.
- k. One in four (25 per cent) renters believe they'll need Government financial support over the next few months to pay their rent; two thirds (66 per cent) of these renters do not already receive the Accommodation Supplement. More than a quarter (28 per cent) of all renters haven't heard of the Accommodation Supplement.
- l. One in twenty renters (5 per cent) report their landlord has reduced their rent, and 1 per cent say their rent has increased during lockdown.
- m. One in seven (13 per cent) renters are planning on moving in the next few months, mainly to new accommodation. Four per cent of all renters were planning before lockdown on moving but have since decided not to.
- n. Reasons why renters who before lockdown planned to move, but no longer intend to, largely relate to new financial constraints: the unaffordability of moving costs (37 per cent), reduced income due to COVID-19 (35 per cent) and job insecurity (29 per cent).
- o. Renters who are planning on moving to new accommodation are planning to do so for a wide range of reasons including cost and landlord intentions for the house.

- p. One in seven (13 per cent) renters are currently actively looking to buy their own home as soon as they can. This compares to 19 per cent prior to lockdown. Of this 19 per cent who were actively looking before lockdown, around half (53 per cent) are still seriously considering buying.
- q. Renters who have stopped actively looking to buy since lockdown have financial concerns and are waiting to see what housing market conditions will prevail.

Property Investors Federation survey April 2020

- 93. The New Zealand Property Investors Federation surveyed rental property owners and property managers to see how they were being affected by the COVID-19 lock down. There were 621 respondents in the first survey, managing a total of 6,056 rental properties.
- 94. Key findings of this survey were:
 - a. Government initiatives, through income supplements and fast-tracking welfare assistance, have helped to keep tenants in their homes.
 - b. Most tenancies (81 per cent) have not experienced any change.
 - c. Fifty-nine per cent of landlords have lost all or some of their regular income from jobs, contracts or business.
 - d. Of those that have had their income affected, 47 per cent have had some loss of income, 33 per cent have lost all their income but have received some government assistance, and 21 per cent have lost all their income and have not received any assistance.

Renters United survey April 2020

- 95. Renters United undertook a survey of renters in April 2020. The survey received 1,983 responses, at least 94 per cent of them in private rentals. In its report, *Renting Under Lockdown*² Renters United say:

The short-term freeze on rent increases and ban on evictions have given some immediate certainty and security to renters during the lockdown. However, without further action from the Government many renters will exhaust savings, fall into debt to their landlords or private lenders, and will remain stuck in unaffordable tenancies where they will struggle to take part in the recovery to come.
- 96. Key findings of this survey were that:
 - a. Four out of five renters were paying unaffordable rents before lockdown began.
 - b. Two out of three renting households have seen their income drop by more than a third.
 - c. Fewer than one in 20 have received some form of meaningful rent reduction.
 - d. Half of renting households have received some new government support, most commonly the wage subsidy.
 - e. More than half of all renting households are worse off even after government support.
 - f. Most renters are having to reduce spending where they can, stop saving and debt repayments and use any savings to pay rent.
 - g. Half of renters are worried about their financial situation.
 - h. One in ten are scared and expect to end up in debt to their landlords.
 - i. One in four expect to have to borrow to pay rent.
 - j. Half report the experience has made them feel worse about renting in general.

1.1 ² <https://www.rentersunited.org.nz/wp-content/uploads/2020/04/renting-under-lockdown-report-final.pdf>

- k. Half say their renting experience during lockdown has harmed their mental wellbeing with worsening anxiety, stress and depression the most common.

Annex B – Draft letter to Ministers and support parties re decision not to extend temporary tenancy terminations

Hon Kris Faafoi



MP for Mana

Minister of Broadcasting, Communications
and Digital Media

Associate Minister of Housing (Public Housing)

Minister for Government Digital Services

Minister of Commerce and Consumer Affairs

Name
Address 1
Email address

Dear

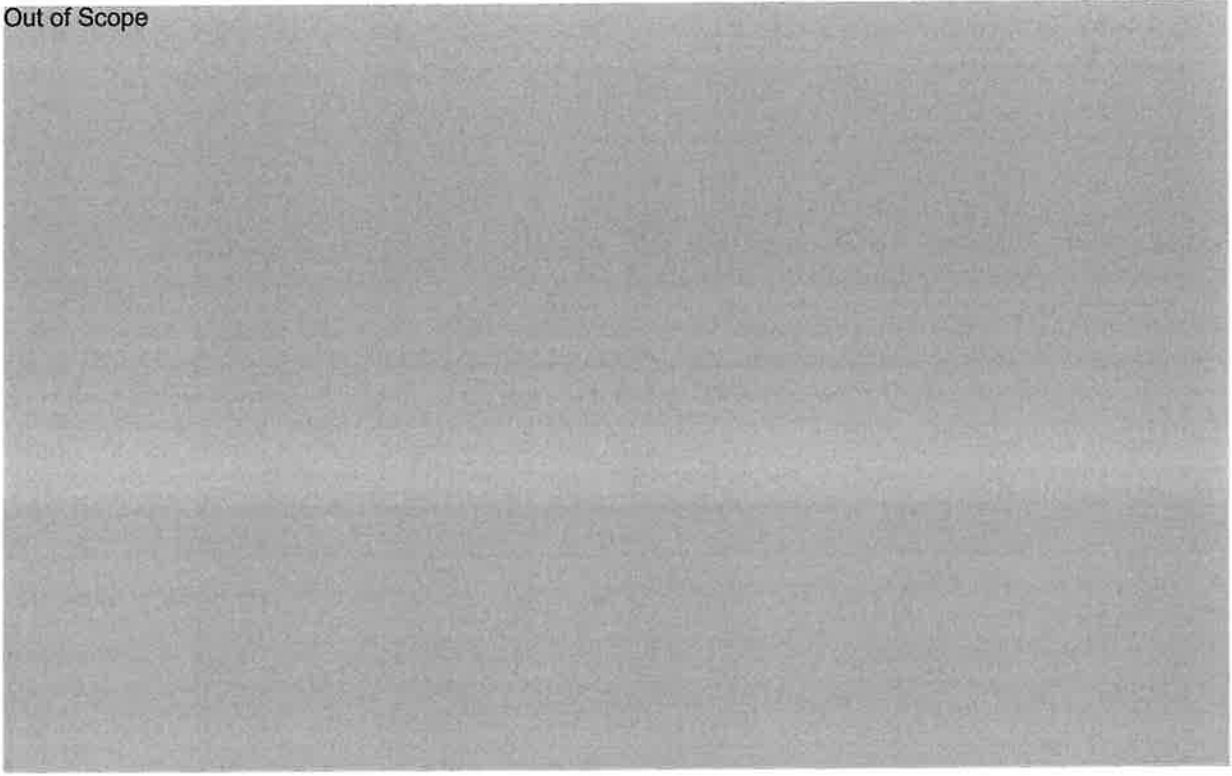
DECISION TO NOT EXTEND COVID-19 RESTRICTIONS ON TERMINATION OF RESIDENTIAL TENANCIES

As you know, the *COVID-19 Response (Urgent Management Measures) Legislation Act 2020* (the Act) came into effect on 25 March this year. The Act includes amendments to the *Residential Tenancies Act 1986* to support the Government's response to the COVID-19 crisis by imposing restrictions on tenancy terminations and freezing rent increases. These restrictions expire on 25 June 2020 and 25 September 2020 respectively. However, the Governor-General may, by Order in Council made on the recommendation of the Minister, extend the restrictions on tenancy terminations for a period of up to three months after 25 June 2020.

Out of Scope



Out of Scope



The social and economic impacts of the COVID-19 crisis on renters are best addressed through appropriate targeted interventions. There are a range of housing assistance products managed by the Ministry of Social Development to help people with housing costs. Government initiatives to cushion the economic impact of COVID-19, such as the Wage Subsidy Extension and the Income Relief Payment, will also assist some renters who are struggling to meet rent payments.

The Ministry of Housing and Urban Development is continuing to monitor rental markets across the country and stressors on renters as a result of COVID-19. Officials are providing advice on whether further work is appropriate on potential options to further facilitate a smooth transition back to a stable rental market.

Out of Scope



Yours sincerely

Hon Kris Faafoi
Associate Minister of Housing (Public Housing)

Annex C: Initial analysis of the four indicative options for supporting a rental markets transition

Main option	Impact on tenants	Impact on landlords	Other advantages or disadvantages	Risks/dependencies of this approach	Comment
Out of Scope					

Main option	Impact on tenants	Impact on landlords	Other impacts or advantages/disadvantages	Risks/dependencies of this approach	Comment
<p>4. Gradual transition out of the freeze on rent increases</p> <p>Current amendments restrict the termination of tenancies (until 26 June 2020) and freeze rent increases (until 26 September 2020). There may be value in transitioning out of the freeze on rent increases in a way that avoids across-the-board increases.</p> <p>Most international restrictions (including in Australia) are applicable for 3-6 months, although there are some variations. For example, in Germany, arrears between 1 April to 30 June 2020 are not grounds to terminate unless they remain unpaid after 30 June 2022.</p>	<ul style="list-style-type: none"> Reduces immediate impact on tenants, particularly where tenants have lost income as a result of COVID-19. Does not encourage lower rents alone Could see significant leap in rents when restrictions are lifted. 	<ul style="list-style-type: none"> Landlords may find themselves unable to meet costs Potential increase in landlord sales (which could put downwards pressure on house prices). 	<ul style="list-style-type: none"> Would not directly help 		Out of Scope



Briefing

Reform of the Residential Tenancies Act 1986: Change to rent increase provisions commencement date			
Date:	16 June 2020	Security level:	In Confidence
Priority:	High	Report number:	BRF19/20060701

Action sought		
	Action sought	Deadline
Hon Kris Faafoi Associate Minister of Housing (Public Housing)	Forward this briefing to the Rt Hon Jacinda Ardern, Prime Minister. Advise officials if you wish to proceed with bringing forward the commencement date for rent increase provisions in the Bill to apply from when the current COVID-19 rent-increase restrictions expire (25 September 2020).	17 June 2020, so the changes can be incorporated into the draft Cabinet paper on family violence.

Contact for discussion			
Name	Position	Telephone	1 st contact
Naomi Stephen-Smith	Manager, Tenures and Housing Quality	04 832 2433	s 9(2)(a) ✓
Kate Rickerby	Senior Policy Advisor	04 832 2434	

Other agencies consulted
Department of the Prime Minister and Cabinet, the Ministry of Business, Innovation and Employment, and the Ministry of Justice.

Minister's office to complete

<input type="checkbox"/> Noted <input type="checkbox"/> Seen <input type="checkbox"/> Approved <input type="checkbox"/> Needs change <input type="checkbox"/> Not seen by Minister <input type="checkbox"/> Overtaken by events <input type="checkbox"/> Declined <input type="checkbox"/> Referred to (specify) _____	Comments
--	----------

Date returned to MHUD:

Briefing

Reform of the Residential Tenancies Act 1986: Change to rent increase provisions commencement date

For: Hon Kris Faafoi, Associate Minister of Housing (Public Housing)
Date: 16 June 2020 **Security level:**
Priority: High **Report number:** BRF19/20060701

Purpose

1. The Department of the Prime Minister and Cabinet has advised us that the Prime Minister is interested in bringing forward the commencement date for the change in the time between rent increases from six months to twelve months. This briefing provides advice on this change.
2. It is recommended that you:
 - a) **Note** that the Residential Tenancies Amendment Bill is before the Social Services and Community Committee. *Noted*
 - b) **Note** that the current commencement date for the Bill is six months from the date of Royal Assent. *Noted*
 - c) **Advise** officials if you wish to proceed with bringing forward the commencement date for rent increase provisions in the Bill to apply from when the current COVID-19 rent-increase restrictions expire (25 September 2020). *Yes / No*
 - d) **If you would like to proceed, agree** that the Bill make it clear that any rent-increase notice served from the day after Royal Assent would only be valid if it purported to increase rent in accordance with the 12-month rules. *Agree / Disagree*
 - e) **Forward** this briefing to the Rt Hon Jacinda Ardern, Prime Minister. *Yes / No*



Naomi Stephen-Smith
Manager, Tenures and Housing Quality
16 / 06 / 2020

Hon Kris Faafoi
Associate Minister of Housing (Public Housing)

..... / /

Background

3. The Residential Tenancies Amendment Bill (the Bill), which amends the Residential Tenancies Act 1986 (RTA), is currently before the Social Services and Community Committee (the Committee). The Committee is due to report back to the House by 13 July 2020.
4. In March 2020, the COVID-19 Response (Urgent Management Measures) Legislation Act (the COVID-19 Act) amended the RTA in response to the COVID-19 pandemic and Level 4 lockdown. The COVID-19 Act placed restrictions on tenancy terminations and a rent increase freeze. The restrictions on tenancy terminations expire on 25 June, with the ability to extend them for a further three months by Order in Council. The rent increase freeze expires on 25 September.
5. You have agreed that the tenancy terminations restrictions will not be extended beyond 25 June. You have also agreed to bring forward the commencement date for the termination provisions in the Bill to the day after Royal Assent, to soften the transition from the COVID-19 Act rules [BRF19/20060691].
6. The Department of the Prime Minister and Cabinet has advised us that the Prime Minister is also interested in bringing forward the commencement date for the change in the time between rent increases from six months to twelve months. This briefing provides advice on this change.

Rent increase provisions – current approach

7. Under the RTA, rent can be increased once every six months.
8. Under the Bill, rent can only be increased once every 12 months.
9. Under both the RTA and the Bill, the landlord can also apply to the Tenancy Tribunal to increase rent in the case of substantial improvements, improved facilities, or a variation of terms, or if the landlord has incurred expenses in respect of the premises that could not be reasonably foreseen when rent was last fixed.
10. The rent increase provisions in the Bill apply to all tenancies, regardless of whether the tenancy commences before, on, or after the commencement date.
11. Under the COVID-19 Act, landlords can issue rent increase notices now to take effect on or after 26 September. For these notices to be valid, they must be given with at least 60 days notice. Given the freeze on rent increases, all these notices would meet the current “no more than once every six months” criteria under the RTA.

Bringing forward the Bill commencement date

12. The proposed change is to bring the commencement date for the rent increase provisions forward to when the current COVID-19 rent-increase restrictions expire (25 September 2020). This would mean that the restriction on allowing rent to be increased only once every 12 months would come into force as soon as those provisions lapsed.
13. If implemented, this change would mean that following the expiry of the rent freeze provisions on 26 September 2020, landlords would only be able to increase rents if:
 - a. The rent had not been increased in the previous 12 months; or
 - b. With the Tribunal’s agreement (subject to meeting the conditions outlined in paragraph 8 above); or
 - c. Between tenancies.
14. Because the COVID-19 Act provisions allow notices for rent increases to still be served (but prohibits the actual increase from taking effect until after the COVID-19 provisions expire), we recommend that you create specific rent increase notice provisions as part of this change.

15. We recommend that the Bill make it clear that any rent-increase notice served from the day after Royal Assent would only be valid if it purported to increase rent in accordance with the 12-month rules.
16. If the Bill did not apply to any action taken before the COVID restrictions expire, this would mean there will be a period between Royal Assent and the expiry of the COVID restrictions where a notice could be served to increase rent that could be valid despite not complying with the 12 month rule (although the actual increase could not occur until after the rent freeze provisions lapsed). This would create a gap in the policy intent of what this change aims to achieve.
17. We do not recommend making the rent increase provisions apply from the day after Royal Assent because this would create uncertainty as to whether the rent increase freeze is still in force.

Impacts for tenants and landlords

Impacts will depend on when the last rent increase occurred in a tenancy

18. The date of the last increase will vary between tenancies. For tenants and landlords who had their last rent increase less than 12 months before 26 September, a change to the commencement date will restrict the ability to increase rent after the rent increase freeze expires on 26 September 2020. For tenants and landlords who had their last rent increase more than 12 months before 26 September, changing the commencement date will have no effect.
19. There is no data available on when rent increases have occurred in the rental market, so we are unable to estimate the numbers of tenancies that will be impacted.

Table of possible scenarios and impacts

Date of last rent increase [Illustrative examples]	Commencement date six months after Royal assent (late Jan/early Feb 2021)	Commencement date when the current COVID-19 rent-increase restrictions expire (25 September 2020)	Impacts on tenants and landlords
26 September 2019	Earliest next rent increase: 26 September 2020. (12 months after last increase).	Earliest next rent increase: 26 September 2020. (12 months after last increase)	Changing the commencement date will have no effect.
26 December 2019	Earliest next rent increase: 26 September 2020. (Nine months after last increase).	Earliest next rent increase: 26 December 2020. (12 months after last increase)	Changing the commencement date will restrict the ability to increase rent after the rent increase freeze expires on 26 September 2020.
25 March 2020	Earliest next rent increase: 26 September 2020. (Six months and one day after last rent increase.)	Earliest next rent increase: 26 March 2021. (12 months after last increase)	

The ability to give a notice to increase rent will also complicate the impact for some tenants and landlords

20. Depending on your decision about notice provisions, some rent increase notices served after the Royal Assent could be valid and allow for a rent increase to occur more than once within a 12-month period.
21. Any rent increase to take effect after the Bill receives Royal Assent which has been notified to the tenant before Royal Assent, but which has not yet taken effect by that date will still be valid under the Bill (i.e. the rent will still increase on the date stated in the notice).
22. If you decide not to include a specific provision on notices to increase rent, notices served (but not in effect) after Royal Assent but before 26 September would still be valid.

Changing the commencement date may assist with the transition out of the COVID-19 rent increase freeze provisions...

23. We are aware that some tenants are currently struggling to meet their rent obligations.¹ The percentage of tenants who are behind in rent increased from 3 percent before lockdown to 8 percent during lockdown.²
24. For some tenants, this change would mean that they may have a longer period of time to prepare financially for any rent increase. This may assist some tenants to be able to afford and sustain their tenancies. For those tenants that have more time before a rent increase, they will have greater ability to plan ahead and access any assistance that they might be eligible for.
25. Bringing the commencement date forward will also likely mean that rent increases across the market will likely be more spread out, rather than the cluster of increases that may have otherwise likely occurred on or soon after 26 September 2020.
26. This change could mean that movement between accommodation due to a tenant no longer being able to afford rent may be spread across a greater period of time. The economic impacts to tenants from Covid-19 could increase demand for lower rent properties, as people who could previously afford median-priced rentals are only able to afford lower quartile properties, increasing competition in this already under-supplied section of the market.
27. If more people are looking to move to a lower rent property due to the economic impacts of COVID-19, this commencement date change could help to smooth any increased demand for lower rent properties across a wider time span.

... however the change will not directly target those who suffer financially due to Covid-19...

28. However, this proposed change will not specifically target those tenants who are suffering financially due to Covid-19.
29. We note that this commencement date change will not address rent arrears issues (and landlords will still be able to terminate on this ground). The Government is providing other support that will support tenants who may be struggling to pay their rent.³
30. The change could, also mean that any supply issues could be exacerbated for those who want to move to a lower rent property but wait longer to do so. However, this overall effect

¹ Citizens Advice Bureau summary of themes from client enquiries – 24 May to 30 May 2020.

² Colmar Brunton A survey of renters during lockdown: topline results 29 April 2020.

³ Income assistance including – the Wage Subsidy and the COVID-19 Income Relief Payment. Rental assistance including - **Housing Support Products** – Bond Grants, Rent Arrears Assistance, Rent in Advance, Moving Assistance, Tenancy Costs Cover, Statement of Satisfactory Tenancy, and Transition to Alternative Housing Grant. **Housing Subsidies** - Accommodation Supplement, Income Related Rent Subsidy and the Student Allowance Accommodation Benefit. **Other** - Recoverable Assistance Payment and Advance Payment of Benefit. Cabinet has also agreed to make temporary policy changes extending access to the existing Rental Arrears Assistance (RAA) scheme for households who have suffered economic impacts from COVID-19 and are struggling to meet the costs of their rental accommodation.

may be marginal as the maximum extra time that some tenants would remain on a lower rent due to these provisions if the commencement date were to be changed is six months. We also note that rent can still be increased between tenancies, and the extent to which landlords might choose to do this is unknown.

... and landlords will have reduced ability to increase rent and structure their financial planning

31. For landlords, this means that they may have to wait longer than anticipated to increase the rent. This means that their ability to meet costs associated with their rental property may be reduced. Landlords' financial planning has already been disrupted by the urgent COVID-19 legislation. They are likely to have limited notice of this additional change, therefore limited ability to change their business and financial planning. Bringing the commencement date forward may also impact the ability of landlords to recoup costs of meeting the Healthy Homes Standards.

Consultation so far suggests that this is not likely to be a controversial change for tenancy stakeholders

32. Submitters to the Bill were generally supportive of the proposal to limit rent increases to no more than once every 12 months, with 80 submissions received in support and 54 opposing. While parties generally supported rent increase provisions in the Bill, we do not know whether they will support bringing forward the commencement date. There could be concern from landlords (particularly given the impact of COVID 19 on the market, and impacts to their ability to plan ahead).

Process required

33. Should you wish to proceed with this change, it could be included in the changes to termination commencement dates that you have agreed to [in BRF19/20060691].
34. The process would be as follows:
- a. Minister's office to discuss with Government coalition and support parties. Their support will be needed for a Supplementary Order Paper (SOP).
 - b. The proposal is likely to require a Cabinet decision. Cabinet has previously agreed on a six-month commencement date. This proposal could be included in the Cabinet paper being drafted on family violence amendments.
 - c. Consult with Ministry of Justice about any potential New Zealand Bill of Rights Act 1990 (BORA) implications.
 - d. Instruct Parliamentary Counsel Office (PCO) to prepare an SOP.
35. We have previously provided you with a timeline based on adding these changes into the family violence SOP. This aims for the Committee of the Whole House stage to be undertaken in the week of 28-30 July. However, the more changes that are included in the SOP, the greater the risk is that the Bill will not be ready, or PCO will not have undertaken the necessary quality assurance processes.
36. We note that the Government has said that it would reassess whether the rent increase freeze should be extended. This would require legislative change. If the rent increase freeze was to be extended another six months, then this commencement date change would be of no effect.

Risks

37. As advised in BRF19/20060691, changes to the commencement dates mean that there is a short amount of time for information and education before the changes come into force. The cumulative effect of this change in conjunction to the termination provisions commencement change creates some communications risk.
38. There may be some implications for the Tenancy Tribunal. Changing the commencement date means that there may be fewer rent increases for a period of time (or they will be staggered across a greater period of time). This could mean that there may be fewer

applications to the Tenancy Tribunal to reduce market rent under section 25 of the RTA. There may, however, be more applications under sections 28 and 28A of the RTA where there have been substantial improvements or unforeseen circumstances where expenses have been incurred.

39. Landlords have told us through a number of channels, including the Bill submissions process, that when their ability to increase rent is restricted, this can mean that when they do increase rent, it is by a larger amount. If this occurs, it could have a negative impact on tenants.
40. Landlords will still be able to put up rents between tenancies. There is a chance that this change could create an incentive to terminate in order to increase rent for a new tenancy. We do not consider this to be a substantial risk, as the maximum amount of extra time that a landlord would have to wait to increase rent is 6 months. Landlords will generally want to keep good tenants in their properties and the costs of finding a suitable new tenant can be substantial.

Consultation

41. We have consulted with the Department of the Prime Minister and Cabinet, the Ministry of Business, Innovation and Employment, and the Ministry of Justice.

Next steps

42. If you wish to proceed with the proposed changes to the commencement date, we will include them in the draft Cabinet paper on family violence. We can also provide information to support Ministerial and support party consultation on the commencement date changes, if you wish.



Briefing

Possible restrictions on tenancy terminations under COVID-19 Alert Level 4

Date:	13 August 2020	Security level:	In Confidence
Priority:	High	Report number:	BRF20/21080751

Action sought

	Action sought	Deadline
Hon Kris Faafoi Associate Minister of Housing (Public Housing)	Note the contents of this briefing	13 August 2020

Contact for discussion

Name	Position	Telephone		1 st contact
Naomi Stephen-Smith	Manager, Tenures and Housing Quality	04 832 2433	s 9(2)(a)	✓
Katherine Slaney	Principal Policy Advisor	04 830 6912	s 9(2)(a)	
Kate Rickerby	Senior Policy Advisor	04 832 2434		

Other agencies consulted

Tenancy Services (MBIE), Ministry of Justice, Ministry for Primary Industries, Ministry of Health, Ministry of Social Development, Department of Prime Minister and Cabinet, Kāinga Ora. Parliamentary Counsel Office.

Minister's office to complete

- Noted
- Seen
- Approved
- Needs change
- Not seen by Minister
- Overtaken by events
- Declined
- Referred to (specify)

Comments

Date returned to MHUD:



Briefing

Possible restrictions on tenancy terminations under COVID-19 Alert Level 4

For: Hon Kris Faafoi, Associate Minister of Housing (Public Housing)

Date: 13 August 2020

Security level:

Priority: High

Report number: BRF20/21080751

Purpose

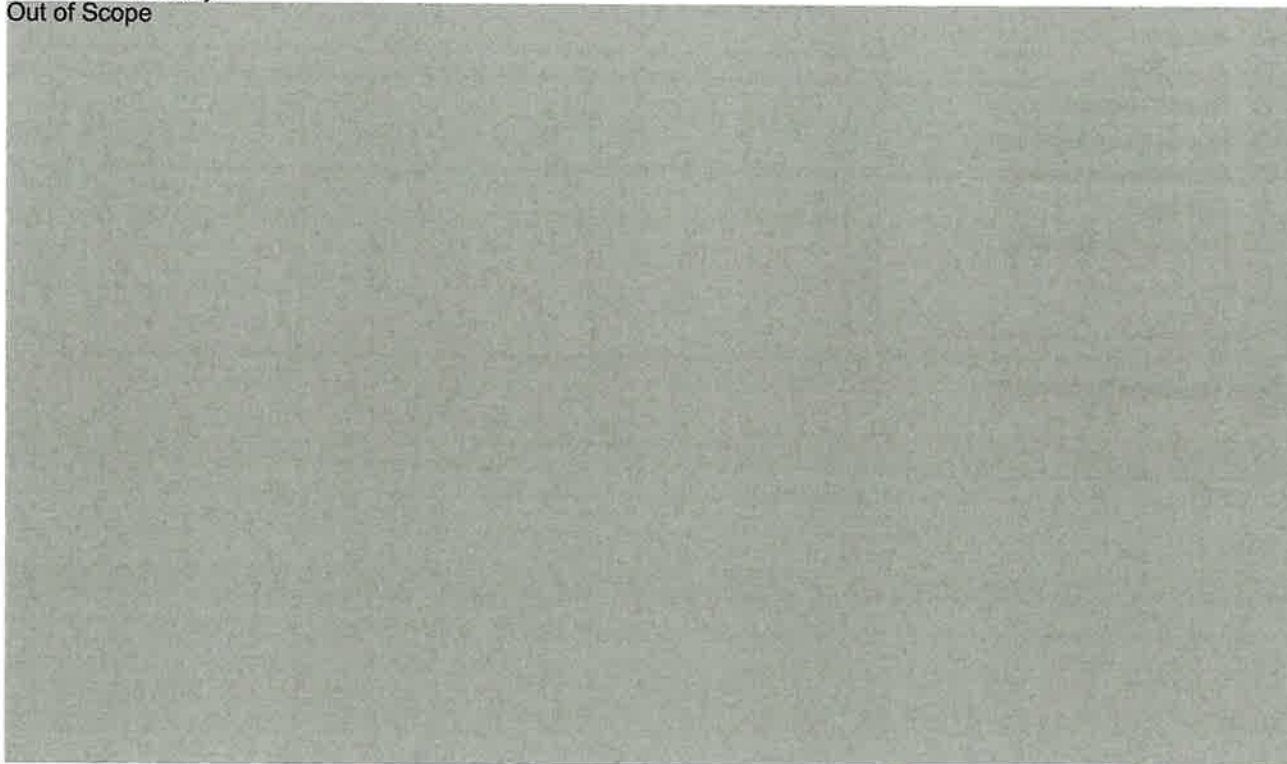
1. To respond to your request for advice about how to make possible Residential Tenancies Act 1986 (RTA) changes if parts of the country goes back into Alert Level 4 – Lockdown.

Executive summary

The Government introduced a range of restrictions and supports to manage public health during Alert Level 4, and also to manage economic impacts

2. On March 25 2020, New Zealand entered Alert Level 4 of the COVID-19 Alert Level system, which placed extensive restrictions on businesses and people's movements. In order to support people staying in their homes, the COVID-19 Response (Urgent Management Measures) Legislation Act 2020 (the COVID-19 Act) included amendments to the RTA to restrict tenancy terminations, freeze rents and enable the Tenancy Tribunal to operate flexibly.

Out of Scope



Out of Scope

Other legislative options could also support a potential future move to Alert Level 4

9. In order to mitigate the impacts of any move to Alert Level 4, further legislative options could also be considered as part of any changes. You may wish to consider:
 - a. extending the rent increase freeze. Unless more legislative changes are made, this will currently expire on 26 September 2020; and/or

Out of Scope

Recommended actions

10. It is recommended that you:

1. **Note** that the temporary changes made to the Residential Tenancies Act 1986 (RTA) by the *COVID-19 Response (Urgent Management Measures) Legislation Act 2020* (the RTA COVID-19 provisions) - restricting tenancy terminations, imposing a rent increase freeze and enabling the Tenancy Tribunal to operate more flexibly - were aimed at managing public health risks by supporting people to stay home and self-isolate. *Noted*
2. **Note** that because of the impositions on property rights, the RTA COVID-19 provisions were time-limited to expire between three and six months after commencement, as it was unclear how long New Zealand would spend in Alert Levels 3 and 4. *Noted*
3. **Note** that the RTA COVID-19 provisions helped to achieve the public health objectives but created some unforeseen issues for some groups of landlords (including farmers with on-farm tenant farm workers) and some tenants. *Noted*

Out of Scope

Noted

Noted

health objectives under Alert Level four.

Out of Scope



Noted

s 9(2)(h)



Noted

Out of Scope



Noted

Noted

10. **Advise** officials whether you would like us to pursue a legislative option, noting at this stage, it is unclear if the House will resume business before the Election.

Yes / No

Naomi Stephen-Smith
Manager, Tenures and Housing Quality

13 / 08 / 20...

Hon Kris Faafoi
Associate Minister of Housing (Public
Housing)

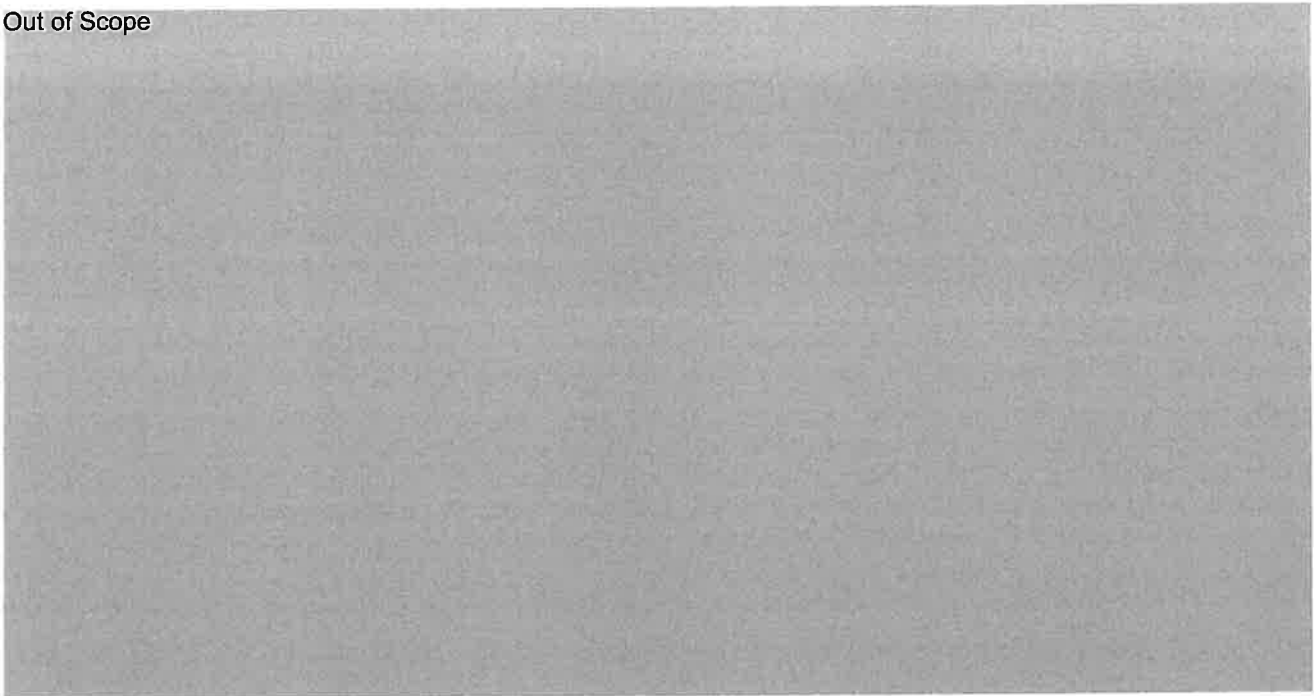
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Background

You have requested advice about possible RTA changes if parts of the country go back into Alert Level 4 – Lockdown

11. Yesterday we provided advice about required changes to tenancy guidance and whether new legislation is required, as a result of Auckland moving to Alert Level 3 and the rest of the country to Alert Level 2 at midday Wednesday 12 August [BRF20/21080748 refers]. That advice recommended not making legislative changes under COVID-19 Alert Level 3 but noted that changes could be considered to support any move to Alert Level 4.
12. You have requested further advice on what residential tenancy-related measures may be required should Alert Level 4 be reinstated, specifically:
 - a. should tenancy termination restrictions be reinstated;
 - b. what legislative vehicle could be used to put restrictions into place, including if it can be done through Public Health Orders;
 - c. should any groups be exempted, such as service tenancies, homeowners returning home, etc.; and
 - d. any other relevant information.

Out of Scope



COVID-19 measures in place during Alert Levels 4, 3 and 2 (March – June 2020)

Temporary COVID-19 changes to RTA supported people staying at home to stop the spread of the virus

15. On 25 March 2020, Royal Assent was granted to the *COVID-19 Response (Urgent Management Measures) Legislation Act 2020* (the COVID-19 Act). This omnibus Act included

¹ This estimate is based on data from the 2018 census and includes households in dwellings that they do not own and are not held in a family trust.

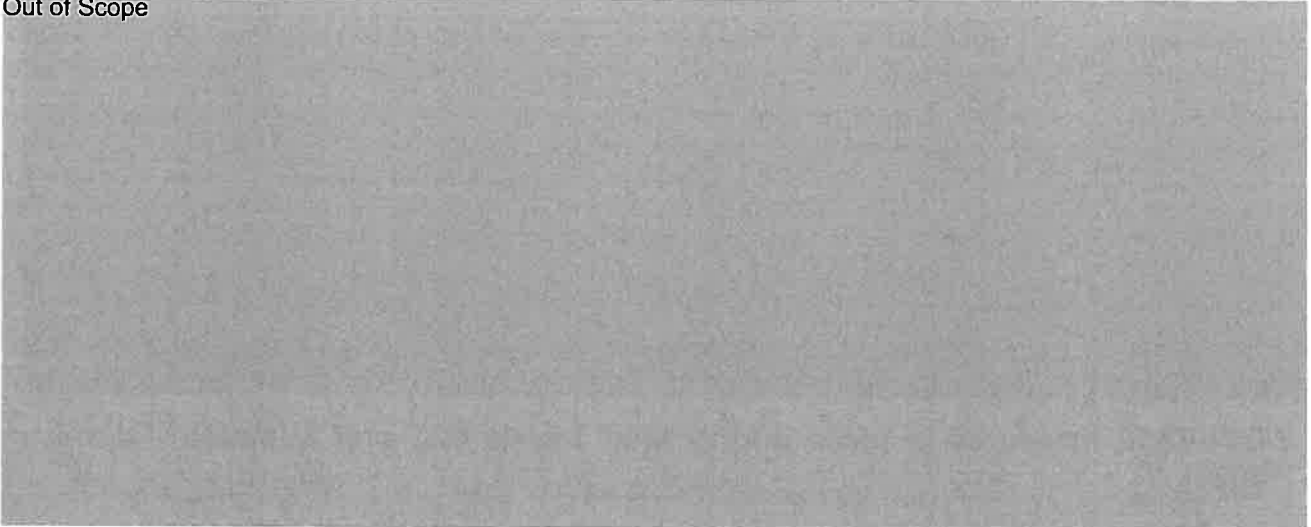
amendments to the RTA, imposing restrictions on tenancy terminations, freezing rent increases and enabling the Tenancy Tribunal to operate more flexibly. The Government also progressed a number of initiatives designed to cushion the economic impact from COVID-19, which will assist renters who have struggled or are struggling to meet rent payments.

16. As it was unclear how long New Zealand would spend in Alert Levels 3 and 4 and because the restrictions amounted to an imposition on property rights, they were time limited. The restrictions on tenancy terminations were active for three months, with the ability to extend them for a further three months by Order in Council. Following advice in early June, you agreed not to use the extension and the provisions expired on 25 June [BRF19/20050670 refers].
17. The rent freeze provisions expire on 25 September (six months after commencement), and while the Tenancy Tribunal provisions were initially intended to do the same, they were subsequently extended to 25 March 2021 as part of the recently passed Residential Tenancies Amendment Act 2020 (the Amendment Act).
18. Further information on the measures that were put in place is provided at Annex A.

The measures helped achieve the public health objectives but created some unforeseen issues

19. We have limited data on the effects of the COVID-19 restrictions on rental markets, in part because these measures were intended to reduce the impact of COVID-19 on the market. Colmar Brunton conducted two surveys in the last days of Alert Level 4 (22-26 April) and the first weeks of Alert Level 1 (10-17 June). A third survey is planned for September.
20. These surveys indicate that many renters were significantly impacted by COVID-19, with more than 40 per cent experiencing a change in income as a result, and 30 per cent struggling more with paying their rent than before Alert Level 4. Nonetheless, in the second survey, fewer renters perceived a need for Government financial support to pay the rent and slightly more indicated that their landlord had reduced their rent.

Out of Scope



Options for effecting changes and linking them to Alert Levels and regions

People need to be able to self-isolate at Alert Level 4

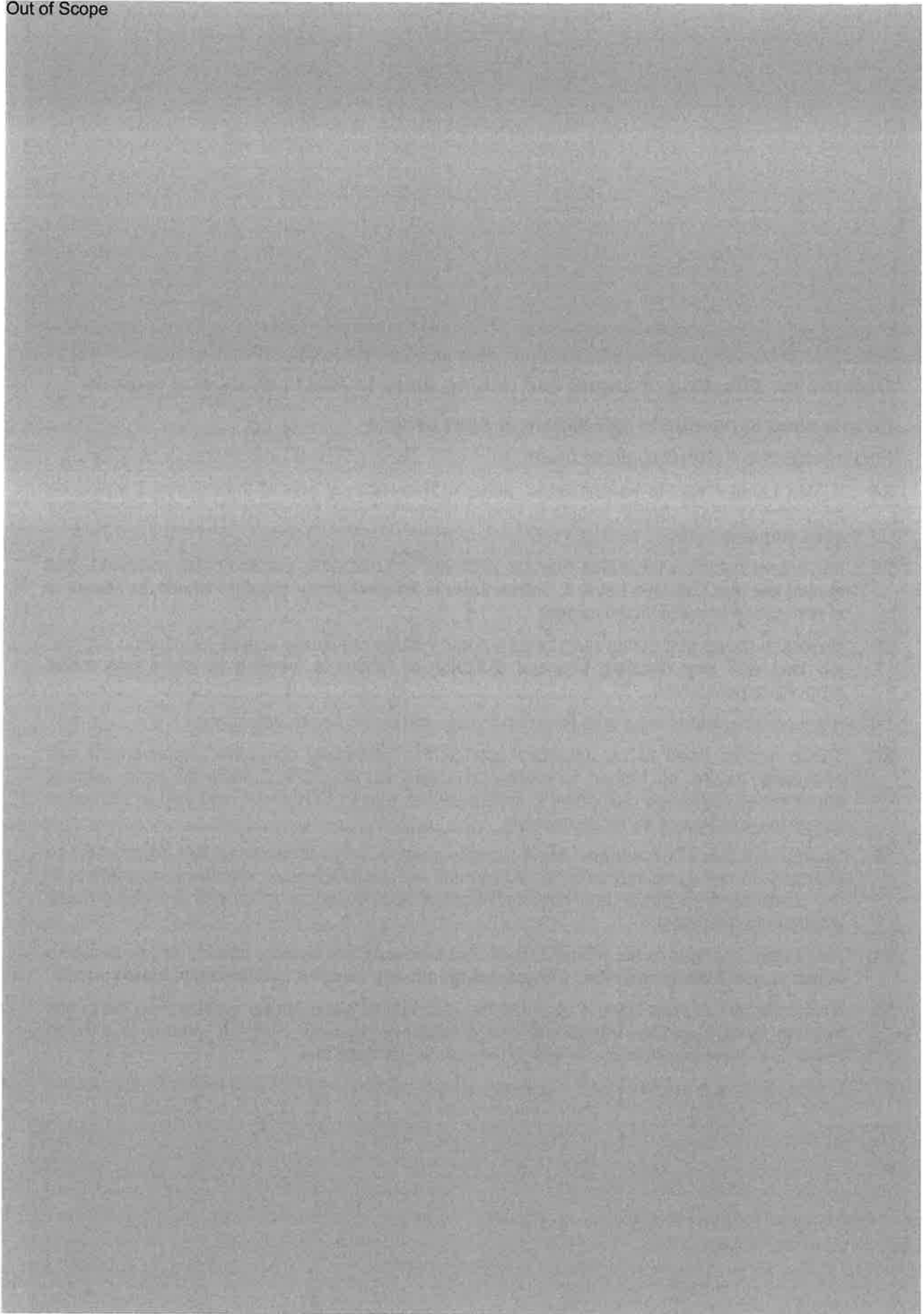
Primary objective – protecting public health

24. If Alert Level 4 was to be reinstated, either in the whole or part of the country, it would be important to again support people to stay at home, to break the chain of spread, contain the virus and save lives.
25. Movement between tenancies has the potential to undermine public health objectives and should not occur at Alert Level 4, unless there is an emergency situation where the tenant is in immediate and significant danger.
26. Drivers of movement during Alert Level 4 could include previously served termination notices, job loss and any resulting financial difficulty, or landlords wanting to move into rental properties themselves.

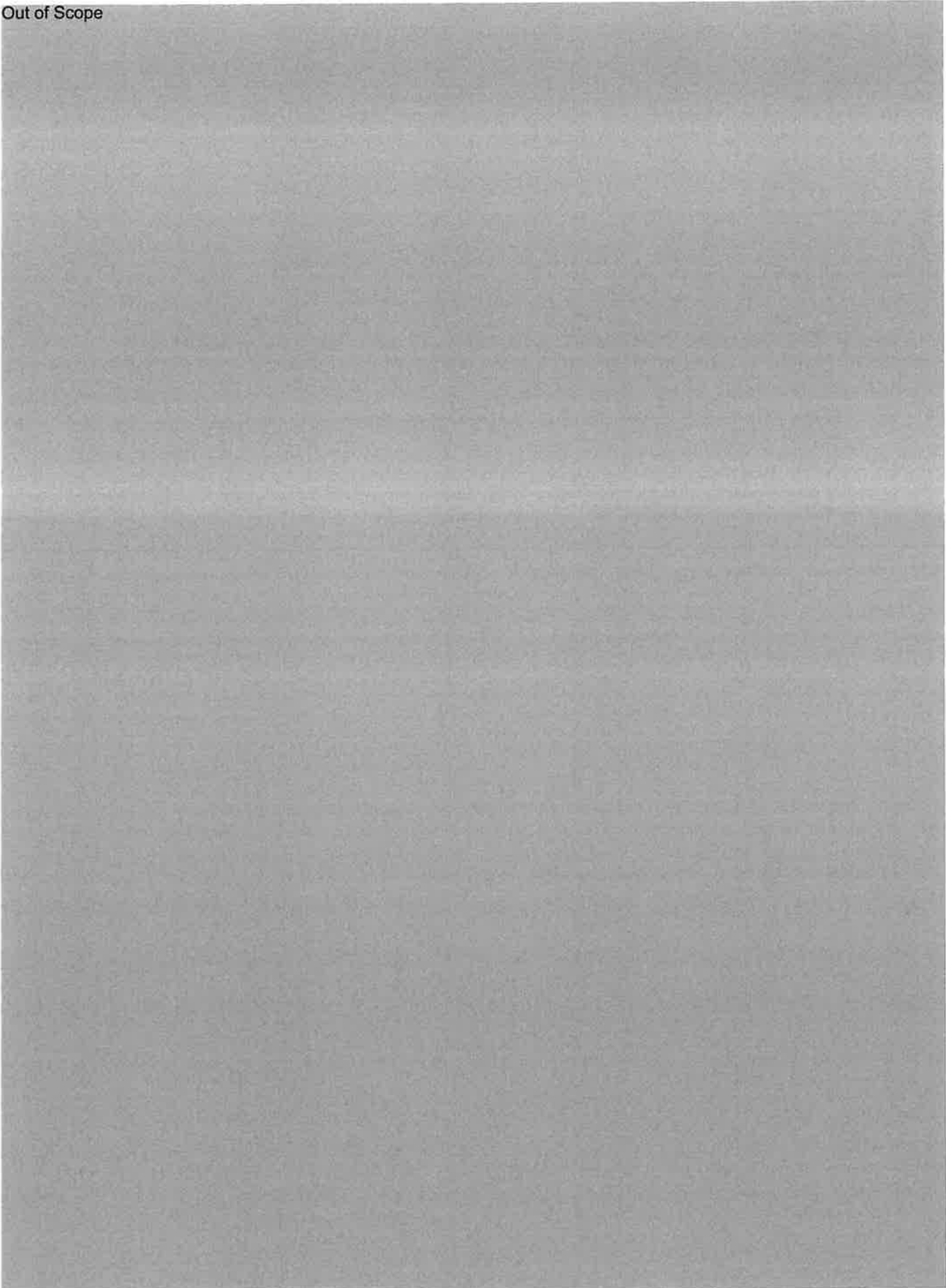
Secondary considerations must also be balanced against public health objectives

27. These factors need to be balanced against the potentially disruptive, inconvenient and confusing nature of further temporary changes to the RTA. Landlords have already experienced significant disruption to their business due to COVID-19, and further disruption needs to be mitigated as far as possible.
28. Changes to the RTA have also been recently passed in the Amendment Act. Most of these changes do not come into force for six months but will still require significant adjustment in the practices of landlords and tenants. Information and education on this are being made available to the sector.
29. Any further changes to the RTA will mean that landlords and tenants need to understand and adjust to new rules in what they may see as an already complex and uncertain environment.
30. Reinstatement of Alert Level 4 also has the potential to place further pressure on the public housing system and on transitional and emergency housing. Keeping tenants in existing tenancies where possible could help to temporarily mitigate this.
31. If restrictions are in place for a significant length, systemic factors like artificially suppressing rents and keeping people in places where there are no jobs should also be considered.

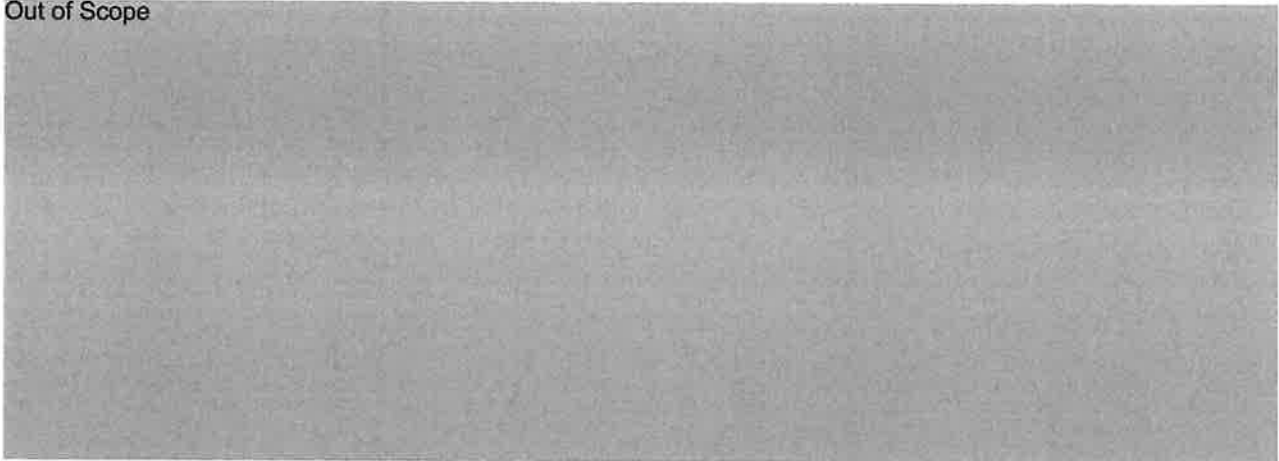
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§ 9(2)(h)

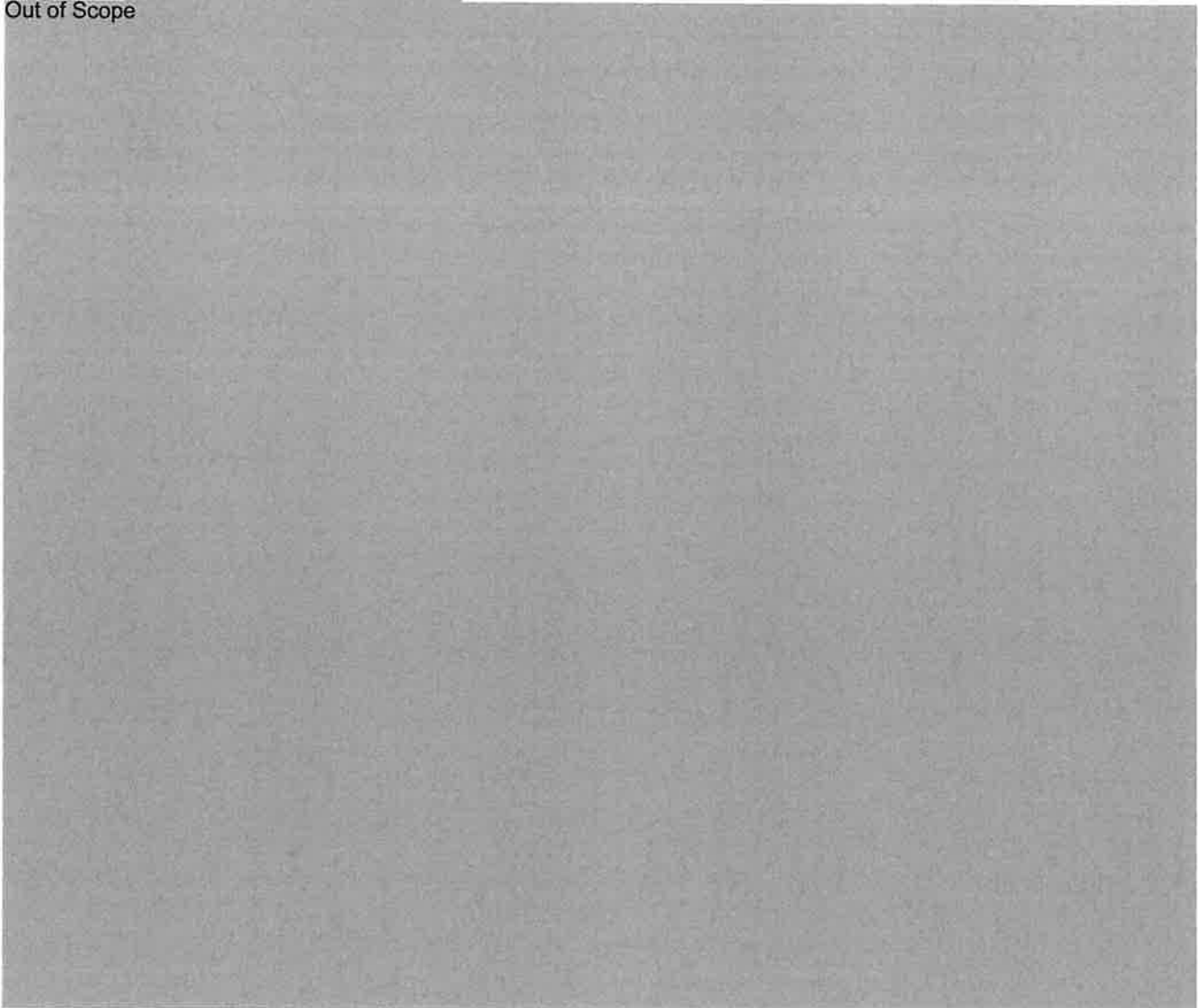
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56. § 9(2)(h)



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Out of Scope

We have also identified other possible legislative changes, that we can consider further if you wish

64. In order to mitigate the impacts of any move to Alert Level 4, further legislative options could also be considered as part of any changes. You may wish to consider:
- a. extending the rent increase freeze. Unless more legislative changes are made, this will currently expire on 26 September 2020; and/or

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65. We can provide further advice on these options if required.

Consultation

66. The following agencies have been consulted on the briefing: Ministry of Business Innovation and Employment (Tenancy Services), Ministry of Justice, Ministry for Primary Industries, Ministry of Health, Ministry of Social Development, Department of Prime Minister and Cabinet, Kāinga Ora, Parliamentary Counsel Office.

Out of Scope

Next steps

69. Officials are available to discuss the contents of this briefing.
70. If you wish, officials will proceed with investigating legislative options, subject to the House resuming business before the election.

Annexes

71. Annex A: Outline of RTA COVID measures put in place on 25 March 2020.

Annex A: Outline of RTA COVID measures put in place on 25 March 2020

The COVID-19 Response (Urgent Management Measures) Legislation Act 2020 (the COVID-19 Act)

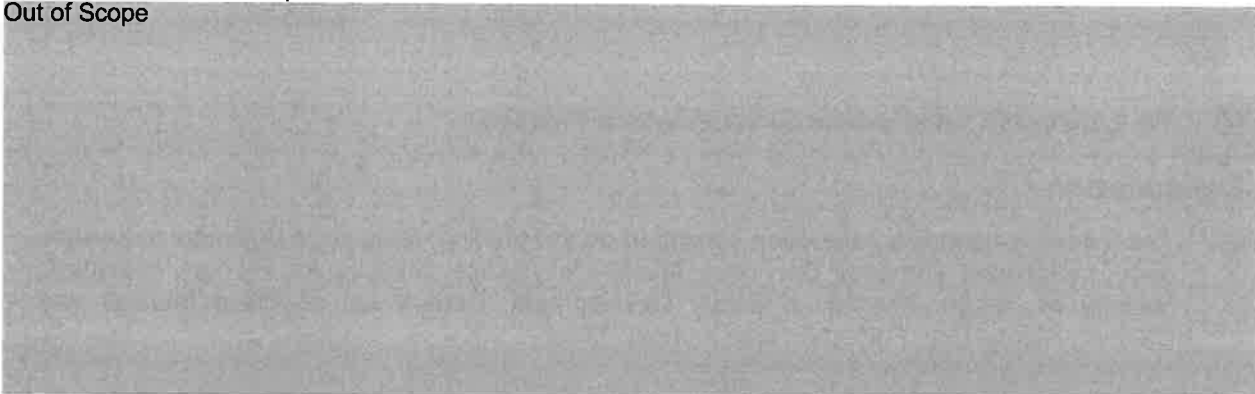
72. On 25 March 2020, Royal Assent was granted to the *COVID-19 Response (Urgent Management Measures) Legislation Act 2020* (the COVID-19 Act). This omnibus Act included amendments to the RTA, imposing restrictions on tenancy terminations, freezing rent increases and enabling the Tenancy Tribunal to operate more flexibly.

Out of Scope



- b. The freeze on rent increases prevented landlords from increasing rents but did not prevent them from negotiating reduced rent. The restrictions on rent increases expired on 25 September 2020.

Out of Scope



74. While not a primary intent of the restrictions, the restrictions also ensured that in the short term, families and individuals who are tenants did not lose their home due to a decrease in income related to job losses through COVID-19 and were less likely to face an increase in rent in a period of significant uncertainty.
75. Because of these impositions on property rights, these provisions were time-limited. As it was unclear how long New Zealand would spend in Alert Levels 3 and 4, the provisions were set to expire between three and six months after commencement.

Out of Scope



77. The rent increase freeze provisions expired on 25 September (six months after commencement). The Tenancy Tribunal provisions were extended to 25 March 2021 as part of the recently passed RTA Amendment Act.

Other temporary changes also assisted at Alert Level 4

78. The Government also progressed a number of initiatives designed to cushion the economic impact from COVID-19, which will assist renters who have struggled or are struggling to meet rent payments. They include:
- a. The Wage Subsidy Extension will be available until 1 September 2020, after the first Wage Subsidy expired on 10 June 2020. The Wage Subsidy exists to support employers (including self-employed people) to retain staff if they are impacted by COVID-19 and face laying off staff or reducing hours.

- b. Workers who become unemployed due to the COVID-19 crisis between 1 March 2020 and 30 October 2020 are eligible for the COVID-19 Income Relief Payment, which is a weekly tax-free temporary income support payment for 12 weeks. The payment is intended to help the newly jobless adjust and find new employment or retrain. It is scaled depending on the hours worked (full- or part-time) and is available to students.
- c. The existing Rent Arrears Assistance Housing Support Product (RAA HSP) offered by MSD has also been expanded. The RAA HSP is a recoverable payment for people with overdue rent who are at risk of losing their tenancy due to the arrears. Until 31 December 2020, the maximum amount of the one-off payment has been increased, and it can be considered in first instance to provide support for rent arrears for both beneficiaries and non-beneficiaries.

Residential Tenancies Amendment Bill: Further proposals for a Supplementary Order Paper

Proposal

1. This paper seeks agreement to progress via a Supplementary Order Paper (SOP) three changes to the Residential Tenancies Amendment Bill (the Bill):
 - 1.1. bringing forward the commencement date for provisions limiting rent increases to once within a twelve-month period;

Out of Scope



Executive Summary

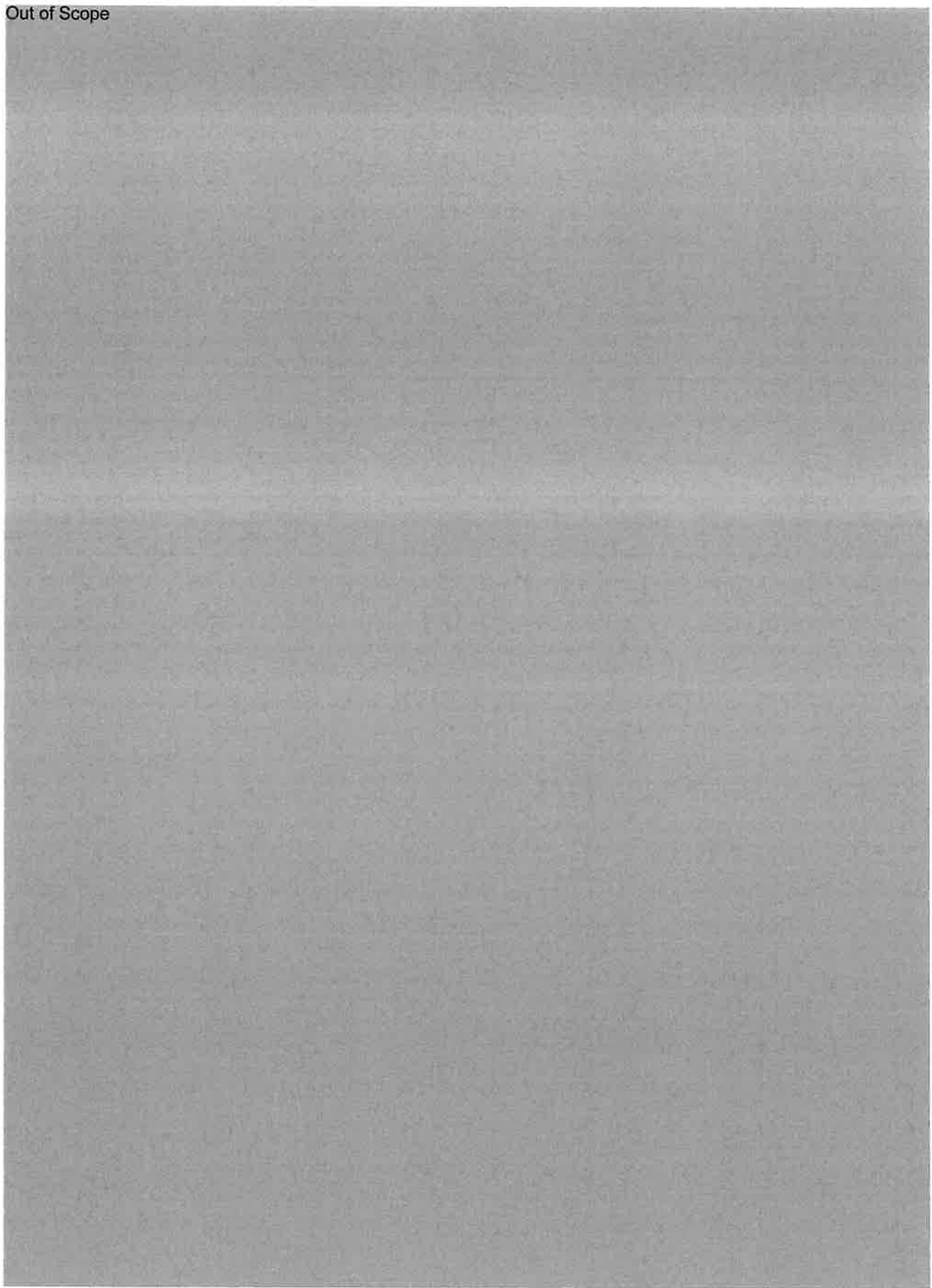
Commencement date changes

2. The majority of the provisions in the Bill have a commencement date of six months after Royal assent.
3. The COVID-19 Response (Urgent Management Measures) Legislation Act 2020 (the COVID-19 Act) amended the Residential Tenancies Act 1986 (RTA) in response to the COVID-19 pandemic and Level 4 lockdown. Among other changes, the COVID-19 Act placed a freeze on rent increases. The freeze on rent increases will lift on 26 September 2020.
4. The Bill changes the time when a landlord can increase the rent from once within 180 days to once within a year after the date on which the last increase took effect. I propose that this provision of the Bill commences as soon as the rent increase freeze under the COVID-19 Act expires, on 26 September.
5. Under the COVID-19 Act, a landlord can currently issue a rent increase notice if it takes effect on or after 26 September. I propose that any rent increase notices issued from the day after Royal assent would only be valid if it would increase rent in accordance with the new 12-month rule.

Out of Scope



Out of Scope



Background

19. The Bill was introduced into Parliament on 17 February 2020. It was referred to the Social Services and Community Committee, who reported back on 7 July.
20. The Bill aims to modernise the RTA while appropriately balancing the rights and obligations of tenants and landlords. It does this by increasing security of tenure for tenants, promoting good-faith relationships in the renting environment, and enhancing powers and tools for the chief executive of the department responsible for the administration of the RTA.
21. The Bill has a commencement date of six months after the date of Royal assent. This currently applies to all the provisions in the Bill, except the provisions relating to transitional and emergency housing [see SWC-20-MIN-0025].
22. Public consultation on the Bill attracted wide interest (over 1200 submitters) from a variety of stakeholders. Most submitters were landlords, who mainly opposed to the Bill. A number of landlord submitters considered that the proposed process for removing a tenant for persistent anti-social behaviour (see clause 37 of the Bill) was cumbersome and time-consuming, and that the bar of three anti-social incidents within 90 days was set too high. This concern was often coupled with opposition to the proposed removal of the existing right to terminate a tenancy with 90 days' notice without providing a reason (a no-cause termination), as landlords felt that the existence of this provision – even when not exercised – provided a bulwark against tenants behaving poorly.

Proposed commencement date for rental increase provisions

The RTA has a rental increase freeze in response to the COVID-19 pandemic

23. The Bill has a commencement date of six months after the date of Royal assent. This applies to all the provisions in the Bill, except the provisions relating to transitional and emergency housing [see SWC-20-MIN-0025].
24. The COVID-19 Act amended the RTA in response to the COVID-19 pandemic and Level 4 lockdown. The COVID-19 Act restricted tenancy terminations by landlords, and placed a freeze on rental increases.
25. A rent increase notice from a landlord before 26 March 2020 will not have the effect of increasing a tenant's rent during the period until 26 September 2020. However, a landlord could give a rent increase notice now that states it will take effect after 26 September.
26. The restrictions on tenancy terminations expired on 25 June 2020. The COVID-19 Act provides the restrictions can be extended for a further three months by Order in Council. The Government has agreed that the temporary termination restrictions will not be extended. From 26 June 2020, tenancies can be terminated in accordance with the provisions of the RTA.

IN CONFIDENCE

27. The rental increase freeze will expire on 25 September 2020. The COVID-19 Act does not include provisions for extending the freeze beyond this six month period.

There will be a period of adjustment from the COVID-19 Act provisions

28. I am concerned that as these protective provisions expire, there will be increased pressure on tenants. Rental prices were already very high pre-COVID-19, with many low-income households spending a large proportion of their income on rent.
29. The ongoing impact of COVID-19 on the rental market is highly uncertain. The Ministry of Housing and Urban Development (HUD) advises me that it is expecting an increase in the number of stressed renters. The effects of COVID-19 on the rental market will vary between regions.
30. HUD advises that some tenants are currently struggling to meet their rent obligations. According to a survey commissioned by HUD, the percentage of tenants who were behind in rent was 2 percent before lockdown, 7 percent in April 2020, and 5 percent in June 2020. There may be a cluster in rent increases after 26 September, which could result in more tenants struggling to meet their rent obligations.
31. The Government is providing a variety of supports for tenants who may be struggling to pay their rent. A cluster in rent increases could result in greater reliance on this government support. It could also encourage tenants to seek lower priced properties, increasing demand for properties in the lower rent quartile.

I propose a change to the commencement date for the rent increase provision

32. I propose bringing the commencement date for the rent increase provisions forward to when the current COVID-19 Act rent increase restrictions expire (25 September 2020). This would mean that the restriction on allowing rent to be increased only once within a twelve month period would come into force as soon as those provisions lapsed.
33. The COVID-19 Act provisions allow notices for rent increases to be served before 25 September. The increase specified in those notices can take effect after the COVID-19 Act provisions expire. I therefore propose the Bill provide that any rent increase notice served from the day after Royal assent would only be valid if it purported to increase rent in accordance with the 12-month rule.
34. Any rent increase to take effect after the Bill receives Royal assent which has been notified to the tenant before Royal assent, but which has not yet taken effect by that date will still be valid under the Bill.
35. Table 1 outlines possible scenarios for how this change will apply.

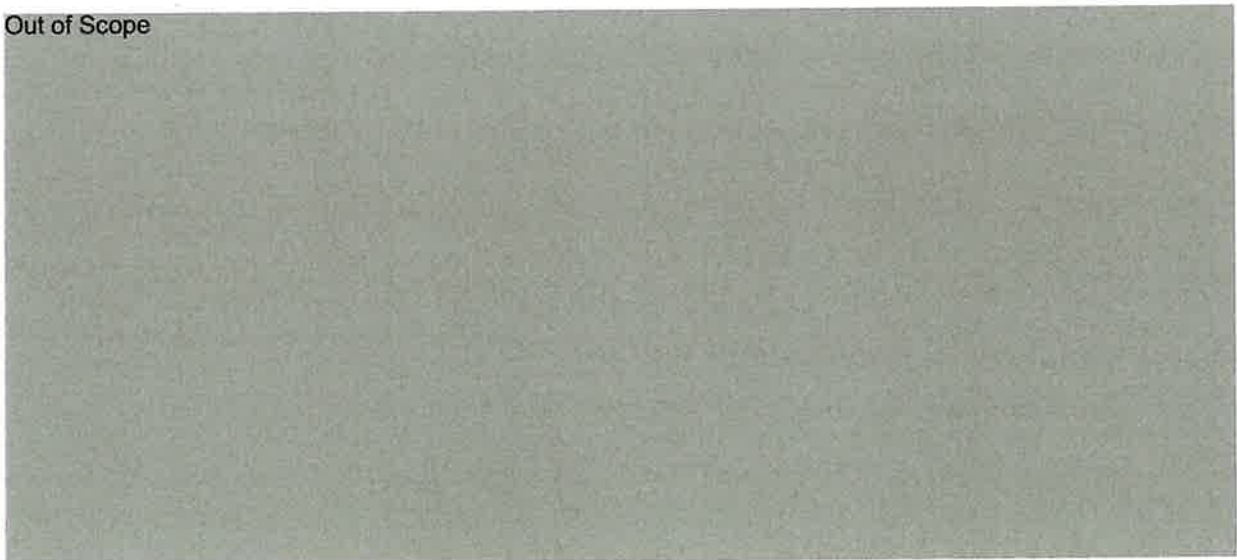
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Table 1: Possible scenarios and impacts of change to commencement date of the rent increase provision

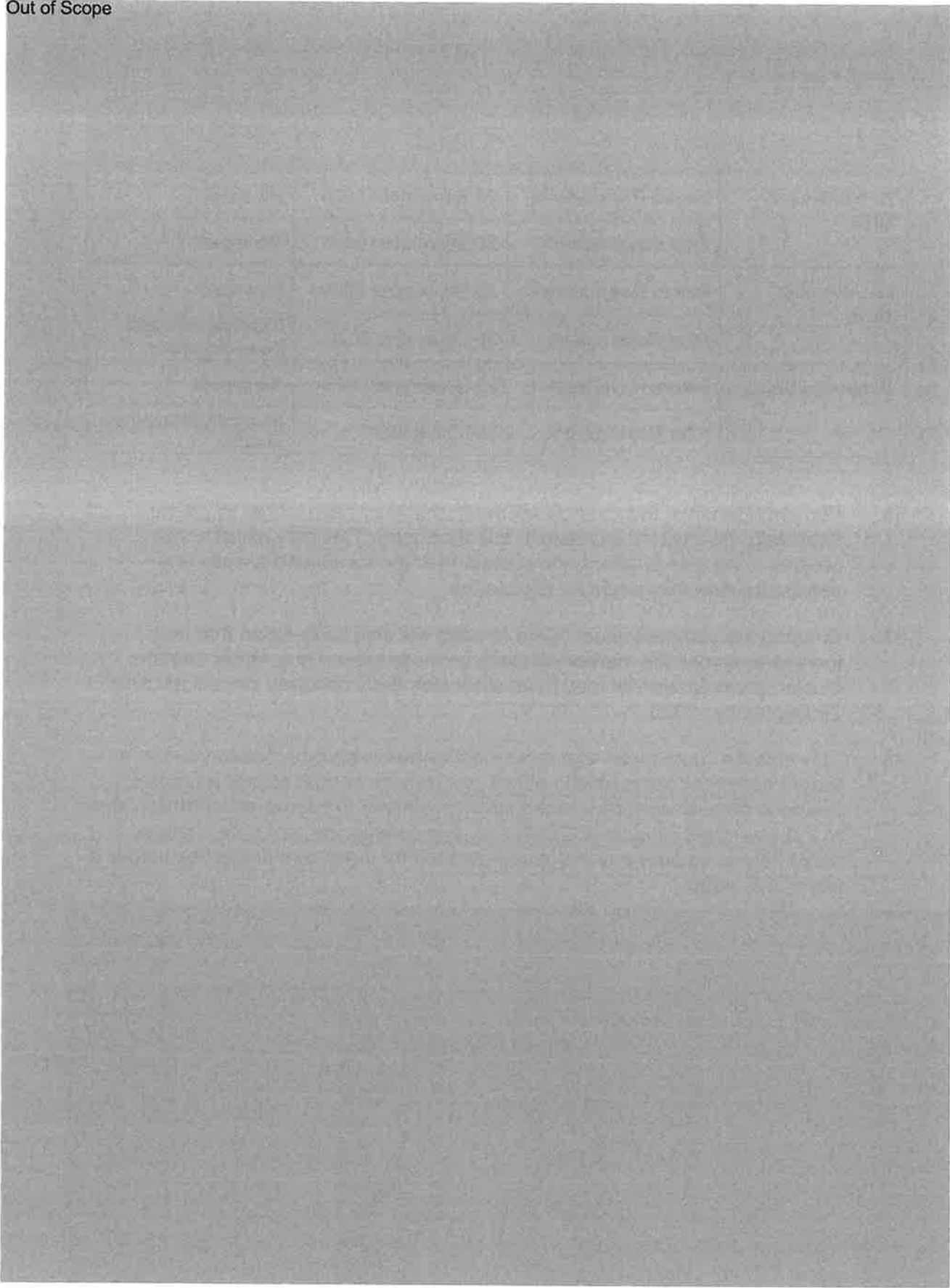
Last rent increase	Notice given for rent increase	Earliest next rent increase	Impacts on tenants and landlords
25 September 2019	Before Royal assent	26 September 2020	No impact
	After Royal assent	26 September 2020	No impact
29 December 2019	Before Royal assent	26 September 2020	No impact
	After Royal assent	30 December 2020	Increase delayed three months
19 March 2020	Before Royal assent	26 September 2020	No impact
	After Royal assent	20 March 2021	Increase delayed six months

36. For some tenants, this change will mean that they have longer to prepare financially for any rent increase in the short term. This may assist some tenants to be able to afford and sustain their tenancies and access any assistance that they might be eligible for.
37. Bringing the commencement date forward will also likely mean that rent increases across the market will likely be more spread out, rather than the cluster of increases that may have otherwise likely occurred on or soon after 26 September 2020.
38. This change could mean that movement between accommodation due to a tenant no longer being able to afford rent may be spread across a greater period of time. If more people are looking to move to a lower rent property due to the economic impacts of COVID-19, this commencement date change could help to smooth any increased demand for lower rent properties across a wider time span.

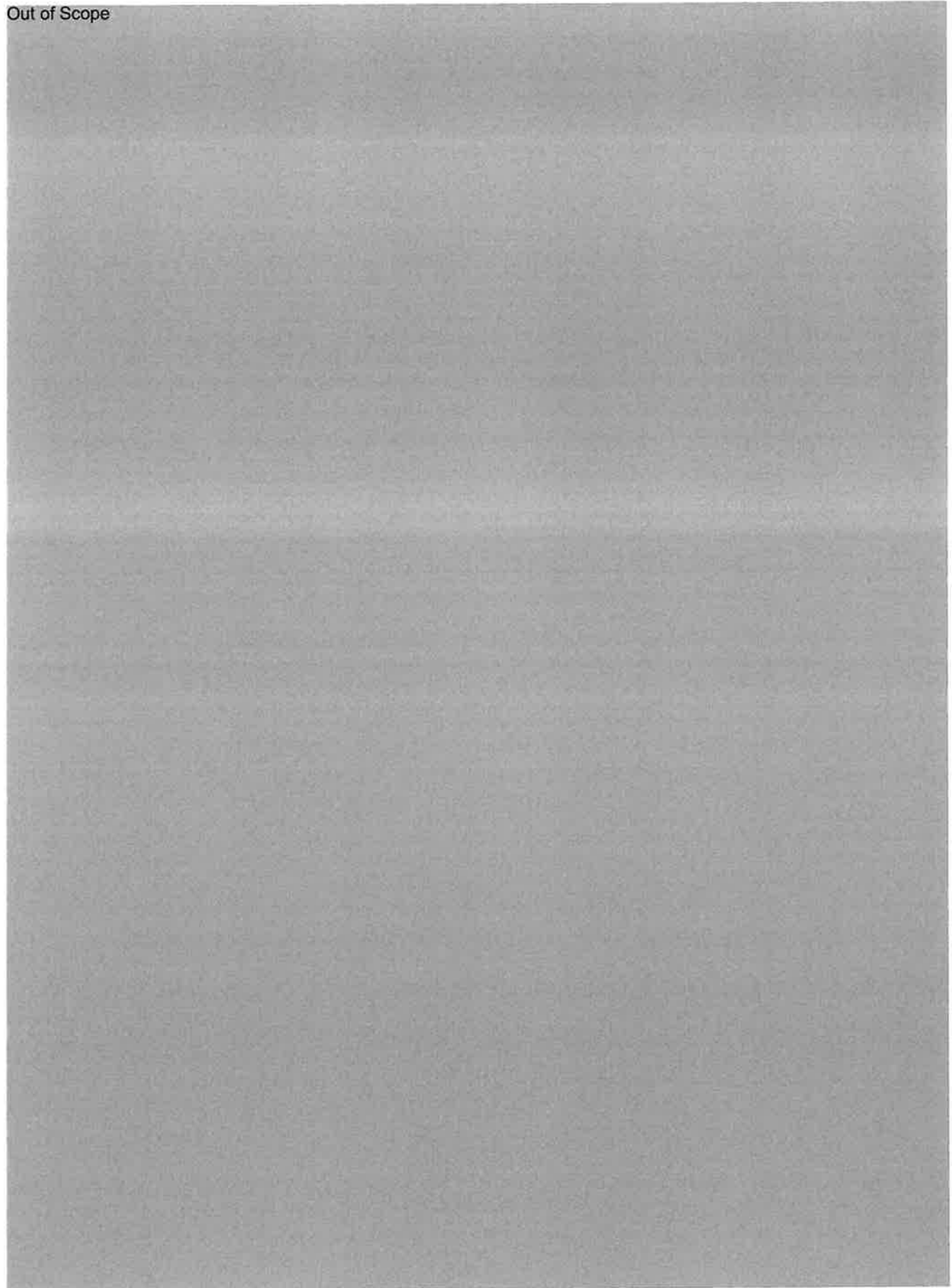
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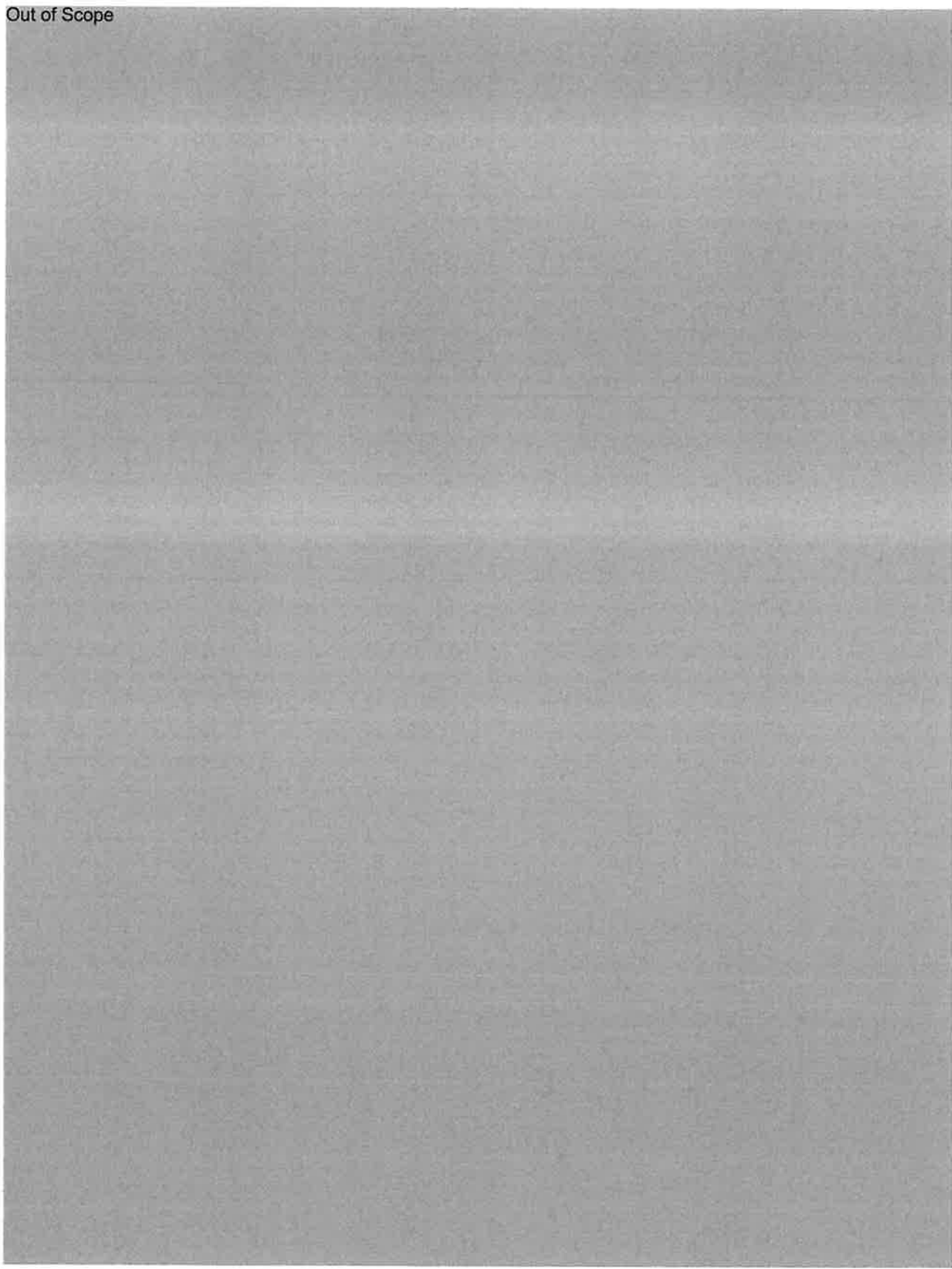


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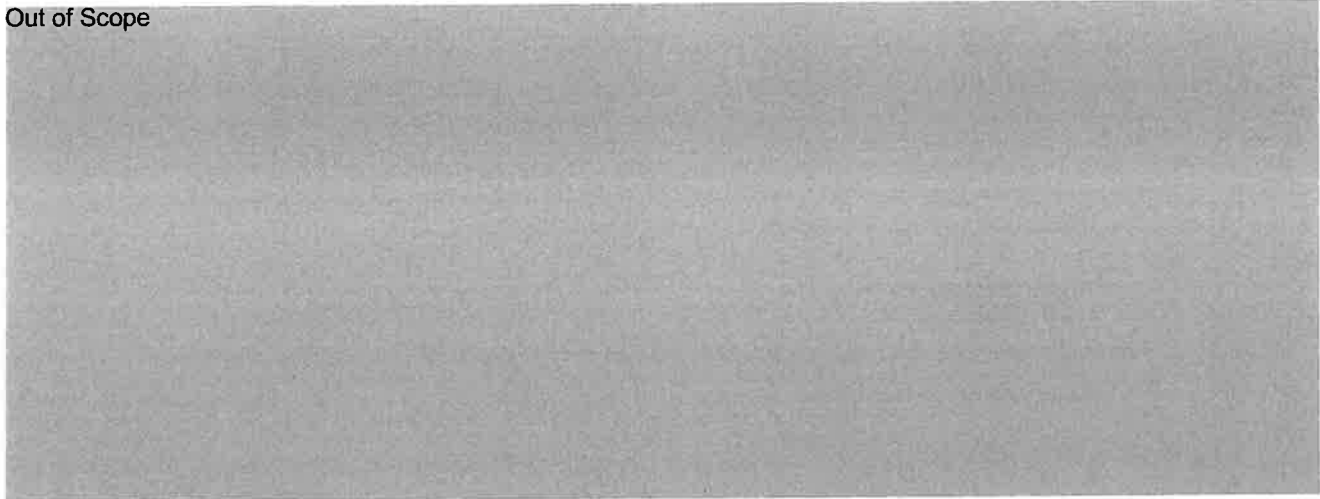
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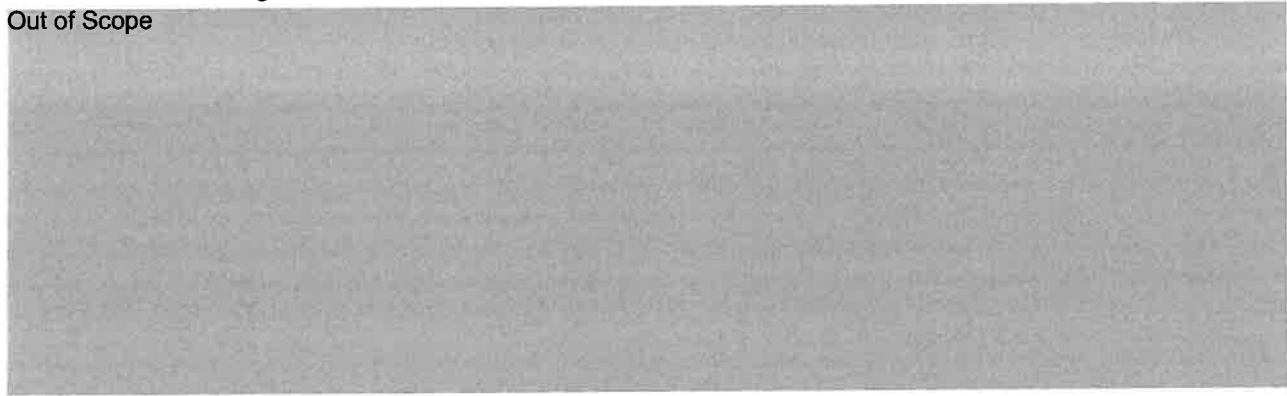
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Implementation

- 69. HUD and MBIE will work together to provide information and education on the changes contained in the Bill.

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Implementation of commencement date changes

- 72. HUD and MBIE will prioritise making information available on the early commencement date. Officials have noted there is very little time for landlords and tenants to be informed of their rights and responsibilities if the changes come into force on Royal assent. Given the current timeframes for the Bill, and that the sector is currently expecting a six-month commencement date based on current Bill content, it is likely that there will be relatively low levels of awareness amongst tenants and landlords regarding the new provisions. This may mean that some rent increase notices will be issued before the landlord is entitled to increase the rent and will be invalid.
- 73. The Ministry of Justice, the Principal Tenancy Adjudicator and MBIE are working together on the necessary system and operational changes to give effect to the full range of amendments set out in the Bill. In accordance with the commencement provisions in the Bill, officials have been working towards having the necessary changes in place for early 2021.
- 74. There may be some implications for the Tenancy Tribunal from the early commencement date for rent increase changes, but the impact is not clear. There may be fewer rent increases for a period of time, or they will be staggered across a greater period of time. This could mean that there may be

fewer applications to the Tenancy Tribunal from tenants to reduce a rent that is substantially above market rent (as the rent has not been increased). There may, however, be more applications from landlords to allow an out-of-cycle rent increase where there have been substantial improvements or unforeseen circumstances where expenses have been incurred.

Financial Implications

- 75. Funding for communication and awareness activities will be resourced from existing agency baselines.

Legislative Implications

- 76. The proposals discussed in this Cabinet paper will be progressed through a SOP. A draft timeframe is below:

Date	Deliverable
30 July	Cabinet Legislation (LEG) paper lodged
3 or 4 August	CAB considers SOP or LEG considers SOP (with power to act)
4 August	SOP tabled in Parliament

Impact Analysis

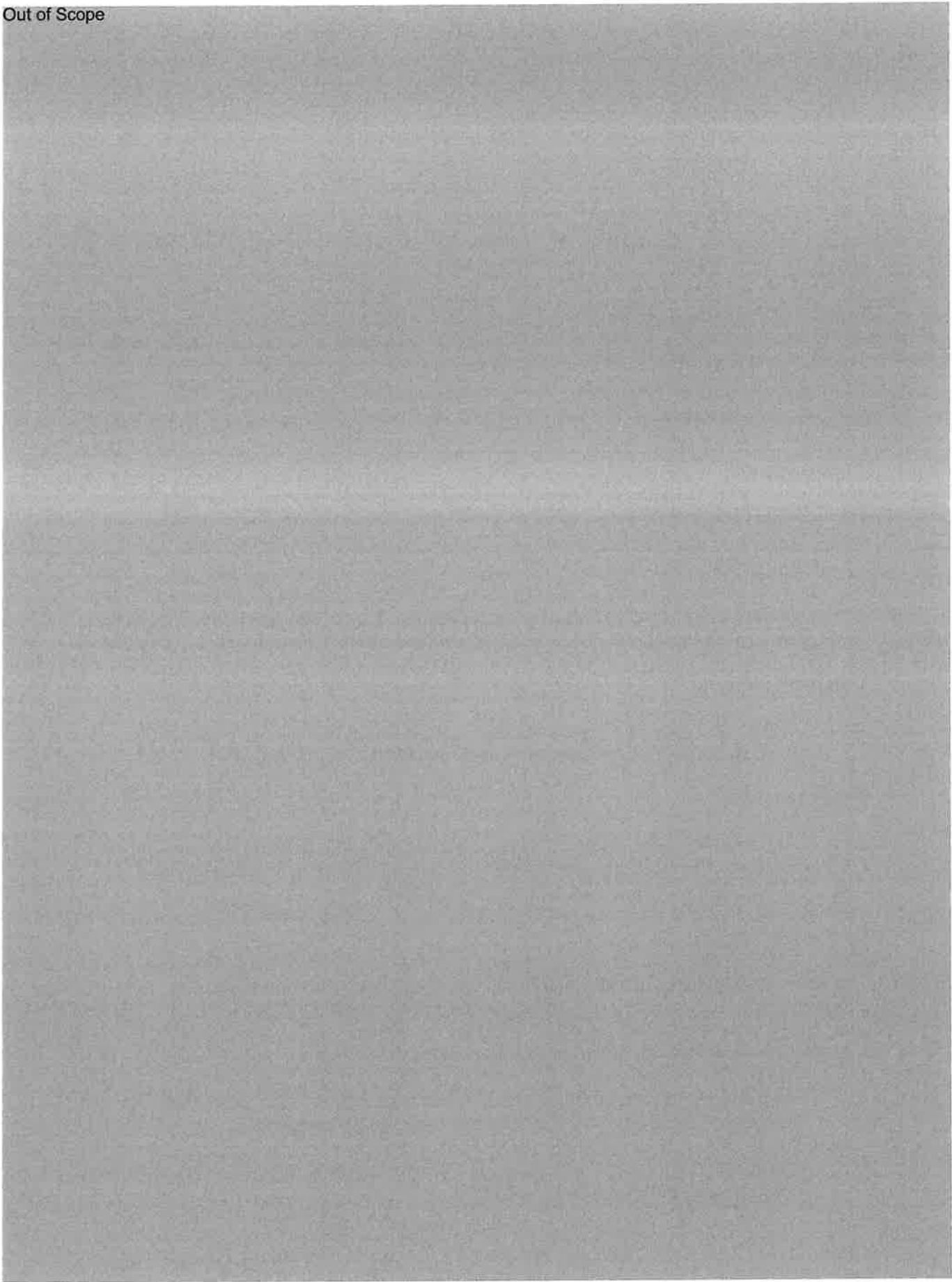
Regulatory Impact Assessment

- 77. The proposed change to the commencement date for the rent increase provisions is exempt from the Regulatory Impact Assessment requirements as it relates directly to the COVID-19 response.

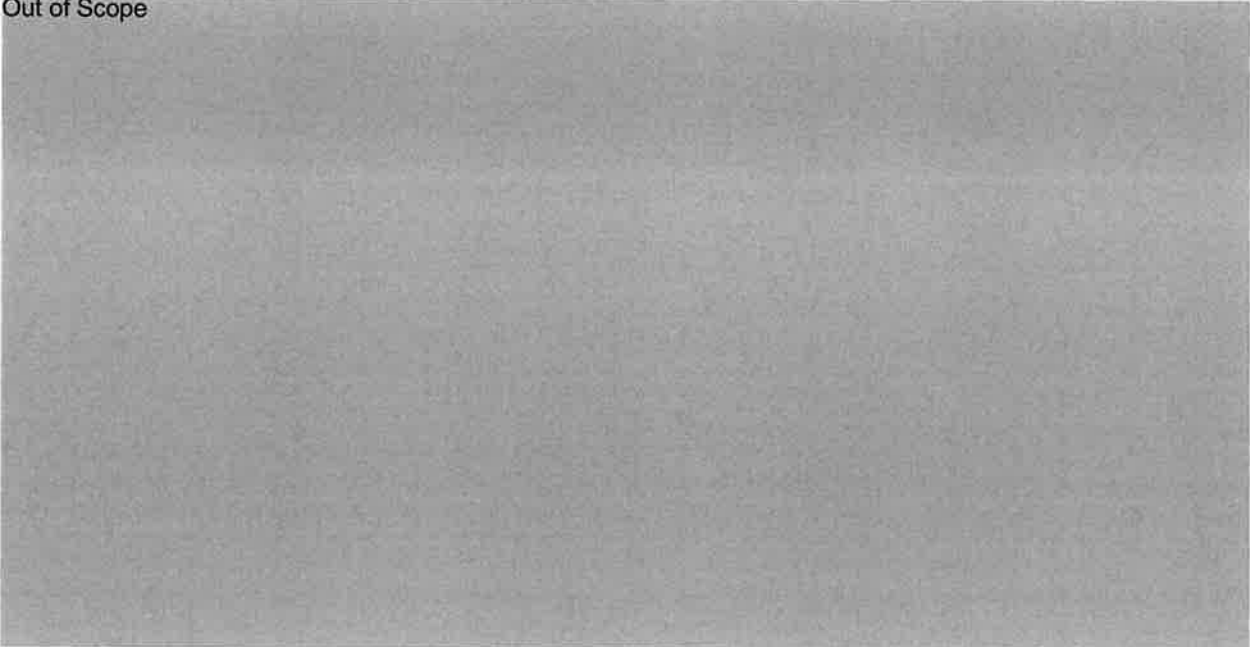
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Consultation

91. Feedback on this proposal was invited from the following departments: Department of Prime Minister and Cabinet; Department of Corrections; Ministry of Justice; Ministry of Business, Innovation and Employment; Ministry of Education; Ministry of Health; Ministry for Pacific Peoples; Ministry of Social Development; Kāinga Ora; the New Zealand Police; Treasury; Te Puni Kokiri; Oranga Tamariki – Ministry for Children; and Land Information New Zealand.

Communications

92. I intend to signal in my second reading speech on the Bill my intention to propose some further amendments to the Bill by way of a SOP.

Proactive Release

93. I intend to release this Cabinet paper proactively in line with Cabinet Office circular Proactive Release of Cabinet Material: Updated Requirements [CO (18) 4] and the Official Information Act 1982.

Recommendations

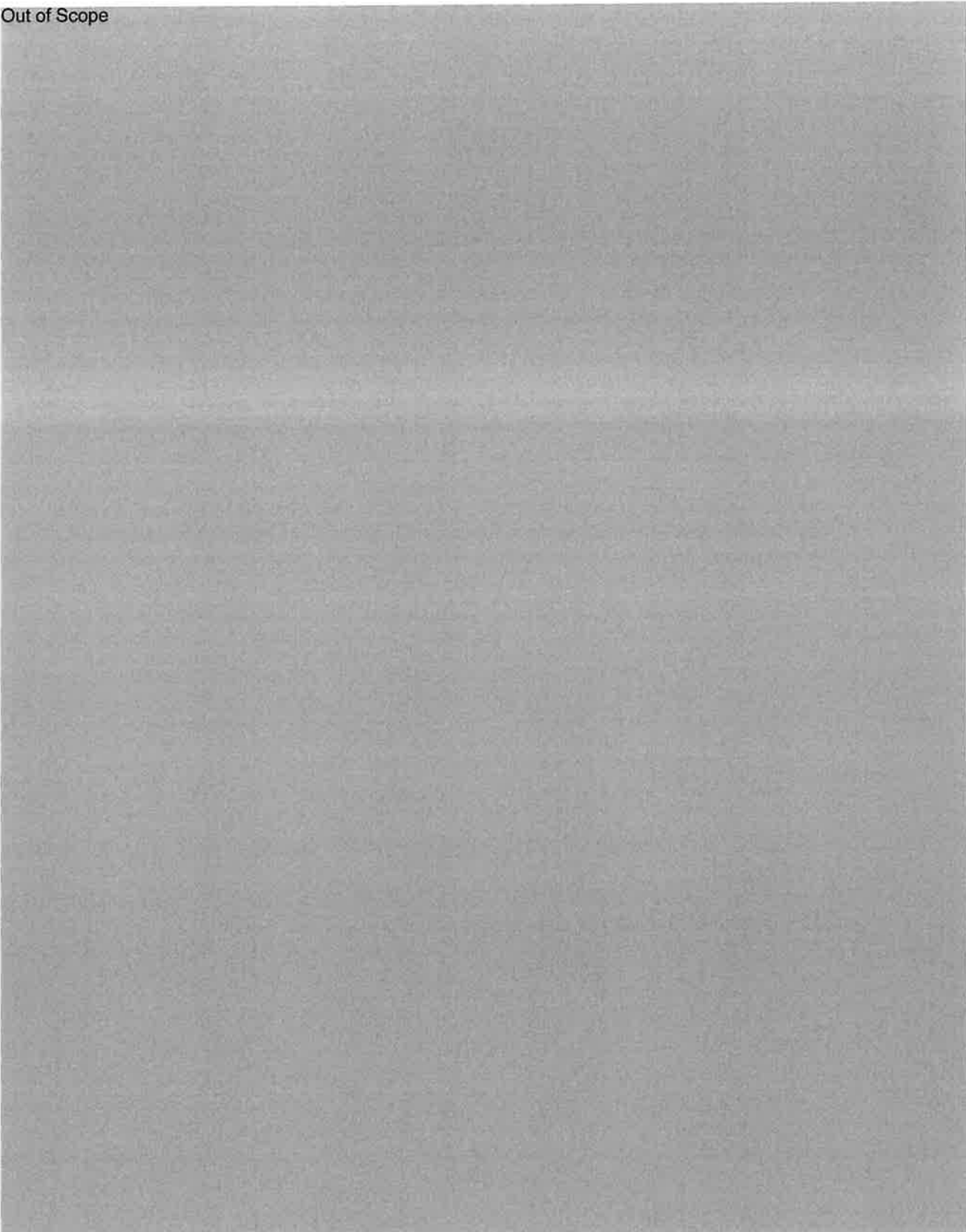
The Associate Minister of Housing (Public Housing) recommends that the Committee:

Commencement date for rent increase provisions

- 1 **note** the commencement date for the majority of the provisions in the Amendment Bill is six months after the date of Royal assent;
- 2 **agree** the commencement date for the provisions in the Bill relating to rent increases should be 26 September 2020;

- 3 **agree** that the Bill include provisions that any rent increase notice served from the day after Royal assent would only be valid if it purported to increase rent in accordance with the 12-month rules;

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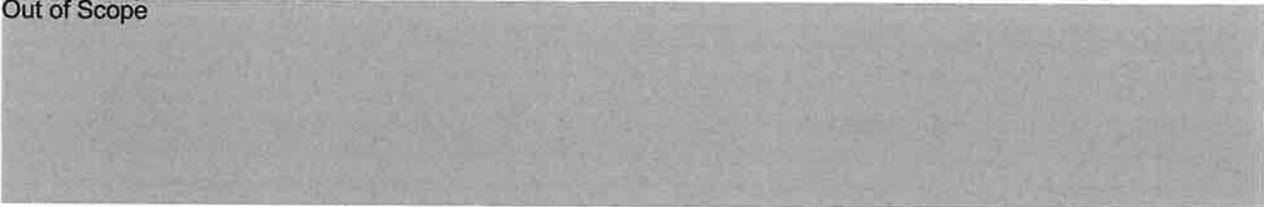
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Drafting instructions

- 15 **authorise** the Associate Minister of Housing (Public Housing) to issue drafting instructions to the Parliamentary Counsel Office to give effect to the proposals in this paper;

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Authorised for lodgement

Hon Kris Faafoi

Associate Minister of Housing (Public Housing)